

***United States Court of Appeals
for the
District of Columbia Circuit***



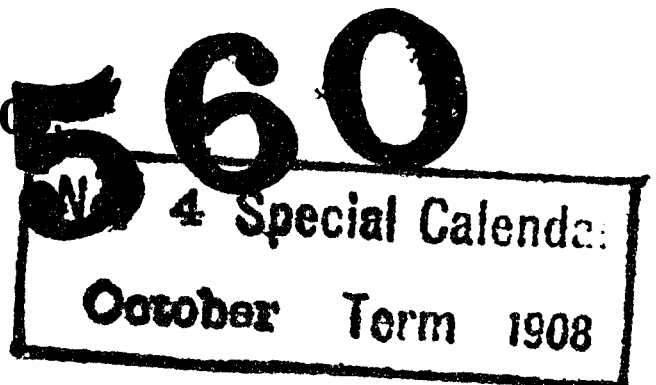
**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1908

No. 1897.



No. 19, SPECIAL CALENDAR.

ALICE TYLER EASTER, APPELLANT,

vs.

JACKSON H. RALSTON, TRUSTEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED APRIL 20, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1897.

ALICE TYLER EASTER, Appellant,
vs.
JACKSON H. RALSTON, Trustee.

a Supreme Court of the District of Columbia.

Equity. No. 7907.

ALICE TYLER EASTER, Petitioner,
vs.
JACKSON H. RALSTON, Trustee, *et al.*, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition.*

Filed March 3, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 7907.

SUSAN W. EDWARDS ET AL.
vs.
CHAPMAN MAUPIN.

The petition of Susan W. Edwards and Alice Tyler Easter, respectfully shows as follows:

The said Susan W. Edwards is a citizen of the United States and a resident of the City of Baltimore, Maryland; and the said Alice Tyler Easter is a citizen of the United States, and a resident of the city of Washington, District of Columbia.

First. Your petitioners are the equitable beneficiaries for life under the will of Mary E. Macpherson, a duly certified copy of which is exhibit "A" to the original bill filed herein. After sundry legacies of no great pecuniary value, the said testatrix, devised to her nephews

Chapman Maupin and Robert W. Maupin, her lot, with the house and other improvements thereon, known as house No. 511 on F street, between 5th and 6th streets, northwest in this city to be held by them in trust as to one moiety for the daughter of testatrix (Susan W. Edwards) for her life, and at her death for her daughter,

2 Susan W. Edwards, (the granddaughter of testatrix) also for her life; and from and after the death of the said granddaughter, then the whole of said moiety to any children or descendants of said granddaughter who may survive, and in case the said granddaughter shall die without children or descendants living at her death, the same to go to her great granddaughter Alice Tyler (the present petitioner Alice Tyler Easter) subject to the provisions made as to the other moiety. The remaining moiety of said realty to be held in trust for the petitioner Alice Tyler Easter, (then Alice Tyler) for her life, with power to her to appoint the said moiety of the real estate aforesaid, among her children and descendants, and in case she shall make no such appointment, then at her death, the said moiety to be distributed among her children and descendants; and in case she shall die without children or descendants living at her death (her mother also being dead) then the same to be distributed among her next of kin. All other property of the testatrix, and "especially that which I (the testatrix) may derive from the estate of my brother, the late Peter G. Washington" she (the testatrix) gives unto the said Chapman Maupin and Robert W. Maupin in trust for the same purpose and upon the same trusts declared in respect of the aforesaid real estate. She appointed the same two nephews to be executors of her will. All which will more fully and at large appear from said Exhibit "A" to which reference is hereby made and which is prayed to be taken as part hereof. Said Mary E. Macpherson died in the year 1873; and the said Chapman Maupin and Robert W. Maupin duly qualified as executors of her will.

3 Second. On November 2nd, 1881, said Susan W. Edwards, widow, the mother of the present petitioner by the same name, and said Alice Tyler (the present petitioner Alice Tyler Easter) by her next friend, Susan W. Edwards, filed their bill of complaint herein, averring the death of Robert W. Maupin, and the desire of the said Chapin Maupin to resign his trust "after accounting in due form." They ask for an accounting and the appointment of a new trustee. The said Chapman Maupin on November 2nd, 1881, answered, stating his readiness to account "for all property and money coming into his hands or those of his co-trustee, or both, wherein the complainants may have any interest under the last will and testament of Mary E. Macpherson. On November 14, 1881 the Court ordered the account of said trustee to be filed within 20 days from the service of a copy of said order; and on the 23rd day of November, it appearing that the trustee had filed his account, the cause was referred to the Auditor "to state the account of said trustee." The first report of the Auditor, after deducting certain expenditures for the permanent improvement of the property and special improvement taxes, from the income of the estate, showed the payments made by the trustee to the beneficiaries to be in excess of

what was properly due them, whereby the beneficiaries were shown to be in debt to the trustee. Exceptions were filed to this report, on the ground that the aforesaid items "should have been charged against the principal of the estate," and because the expenditure of the income by anticipation was forbidden. The exceptions were sustained. A second report of the Auditor showed the balance of income

4 for distribution, after deducting expenses to be \$1789.50, and the balance of the amount received from the estate of Peter Washington, to be \$530, which sum of \$530 in addition to the real estate, remained to be turned over as corpus or principal to the substituted trustee.

Third. Your petitioners further show that thereafter, on the 29th day of March, 1882, the court, decreed that the fee simple estate in the land in this city devised by said testatrix to Chapman Maupin and Robert W. Maupin, upon the trusts declared in said will, be "taken out of the said Chapman Maupin the survivor of the said co-trustees, and vested in James B. Green of the City of Baltimore, together with all the rights, powers, duties, and obligations incident thereto under the said last will and testament; and further decreed, "That all the trusts vested by the said will in the said co-trustees, and surviving to the said Chapman Maupin, be, and they are hereby abrogated and repealed as to him, and conferred upon the said James B. Green, subject to the terms of the said last will and testament, * * * and that he shall at all times be subject to the control and order of this court, in matters touching the trust." By the same decree the bond of said Green was required to be in the sum of \$8,000. All which will more fully and at large appear from said decree in this cause of March 29, 1882, to which reference is hereby made, and which, is prayed to be taken as part hereof.

Fourth. Your petitioners further say that thereafter, viz: on March 7, 1888, the said James B. Green, claiming to have the same discretion which was originally vested in the testamentary trustees, 5 against the expressed wish and direction of his *cestuis que trustent*, undertook to sell, and did sell the real estate in this city left in trust as aforesaid; and on the date last mentioned procured an order of court, ratifying and confirming his report of said sale. As soon as possible thereafter, viz: on March 17, 1888, a proceeding was instituted in this cause to have the said order of March 7, 1888, vacated and set aside, as having been improvidently passed, and to have the said James B. Green removed from his office of trustee, and to have some other appointed in his stead; and after litigation carried finally to the Supreme Court of the United States, the said sale was set aside, and the said trustee was removed, and the Supreme Court declared (134 U. S. 125) "The order appointing a new trustee expressly declared, that he shall at all times be subject to the control and order of the court touching the trust."

Fifth. Thereafter, viz: on October 17, 1890, this court adjudged, ordered and decreed as follows: that the fee simple estate devised by said last will and testament as aforesaid be, and the same is hereby taken out of James B. Green, and vested in William H. H. Raleigh

and Thomas E. Waggaman, together with all the rights, powers, duties and obligations incident thereto, under said last will and testament; and further adjudged, ordered and decree as follows: That all the trusts vested by the will in the said James B. Green, be and they are hereby abrogated and repealed as to him, and conferred upon the said William H. H. Raleigh and Thomas E. Waggaman, subject to the term of the said last will and testament. It
6 was again ordered, by said decree, that each of said trustees "shall at all times be subject to the control of this court in all matters touching the trust." All which will more fully appear from said decree, which is hereby expressly referred to and prayed to be taken as part hereof.

Sixth. Your petitioners further say, that each trustee gave bond in the sum of \$10,000 for the faithful performance of his duty. In the bond of said Waggaman, bearing date October 24, 1890, it is recited—"Whereas Thomas E. Waggaman has been duly appointed by decree passed in this cause on October 17, 1890, trustee *in conjunction with* Wm. H. H. Raleigh under the will of Mary E. Macpherson, in place of James B. Green" &c. And in the bond of Wm. H. H. Raleigh filed on the 29th day of October, 1890, it is recited "Whereas the said Wm. H. H. Raleigh has been duly appointed by decree passed in this cause October 17, 1890, trustee *in conjunction with* Thomas E. Waggaman, under the will of Mary E. Macpherson in place of James B. Green" &c. All of which will more fully and at large appear from duly certified copies of said bonds herewith filed, marked Exhibits "B" and "C," and prayed to be taken as part hereof. Said original bonds were each duly approved by the court.

Seventh. Your petitioners further say, that in the settlement of the account of said James B. Green, the Auditor's report (filed April 6, 1891) charged him with \$530.00 received from Chapman Maupin, which by expenditures allowed was reduced to \$504.22—the balance
7 due from accountant as principal; and the balance of rents after deduction of allowances \$2.32. The balance of rents due from A. M. Kenaday, during his possession of the property, under the attempted sale, which was set aside, \$417.15; to be augmented by the rent presumably collected by Kenaday from January 31, 1891, to March 3, 1891. By order of court filed July 27, 1891, the said Auditor's report was confirmed. On July 27, 1891, an order was passed directing the payment by the Clerk of said Court to Raleigh and Waggaman, trustees, or their solicitors of record, of \$417.15 then in the Registry of the court; said sum being the deduction, on account of rent due by said Kenaday, from the deposit of purchase money, made under order of court by said James B. Green. And that on or about July 27 or July 28, A. D. 1891, said sum of \$417.15 was paid by said Clerk to said Waggaman and Raleigh, Trustees, or their solicitors.

Eighth. Your petitioners further say, that on November 24, 1893, the said Waggaman and Raleigh filed a petition in which is stated, that by his report filed April 6, 1891, the Auditor "showed a balance due of \$506.54 (being said sum of \$504.22 plus said sum of \$2.32), and now in the Registry of the court, and petitioners aver, that they

are entitled to an order directing the clerk to pay to them said sum so paid in, that they may dispose of it for the benefit of the beneficiaries in accordance with the terms of said will." The prayer asks that an order "be passed directing the Clerk of this court to pay to them the said sum of \$506.54 so remaining with the Registry to be disposed of as by said will directed." And that on February 1, 1894,

8 it was ordered that the Clerk of this court pay to the trustees Thomas E. Waggaman and W. H. H. Raleigh or their solicitors said sum of \$506.54, deposited in the Registry of this court, August 5, 1891, by James B. Green, former trustee.

Ninth. Your petitioners further show that viz: on January 21, 1891, the trustees W. H. H. Raleigh and Thomas E. Waggaman filed their petition, representing, that there was due to the solicitors, who had prosecuted the cause against the trustee Green to the Supreme Court of the United States, a fee of \$1,000; to Mr. Christian of Richmond, Virginia, a fee of \$100; and expenses of printing \$26, and outside of said real estate on F street, northwest in this city, the only assets available for the payment of said bill was a claim against said Green for money in his hands, payable to said trustee, but which in all probability could only be obtained by suit on his bond and a claim of rent due from purchaser; that only by a sale or incumbrance of said realty could the sum be raised for the payment of said indebtedness. On the same day a decree was signed directing the trustees to borrow a sufficient sum to pay the debts referred to in said petition, and secure the same by deed of trust on said real estate.

In this connection your petitioners further say that no suit was ever brought either by said Waggaman and Raleigh, trustees, or by said Waggaman and Ralston, trustees, against said Green or upon his bond, to recover the balance due from him to said trust estate, nor was any suit brought, or proceeding instituted by said trustees against said purchaser to recover the rent due from him from January 31, 1891, to March 3, 1891, or any steps taken to secure
9 the same out of the purchase money deposited in the registry of said court.

Tenth. Your petitioners state, that on November 2nd, 1891, the said trustees Raleigh and Waggaman, with the sanction of the equitable life tenants, filed another petition, asking authority to sell said property at public or private sale, subject of course, to ratification by the court; stating their belief, that "they can obtain a good price therefor, and by reinvestment under the trusts of said will twice the revenues now derived can be obtained." On the same day the decree was passed authorizing the said trustees to make sale of the said realty at public or private sale; and directing them to report any sale so made for the approval of the court. On February 17, 1892, the said Raleigh and Waggaman reported to the court, that they had sold the real estate referred to in these proceedings to Jefferson B. Cralle and Abraham Fisher, at and for the sum of \$17,460, upon the following terms; viz, \$2,500 in cash and the balance in three equal instalments of three, six, and nine years, secured by deed of trust on said property, and bearing interest at the rate of 6% per annum: all of which will more fully appear from said report, which is hereby

expressly referred to, and prayed to be taken as part hereof. On the same day, the said sale was duly ratified and confirmed by the court.

Eleventh. Your petitioners further show, that said Susan W. Edwards, the present petitioner by that name (her mother, the original equitable life tenant by that name, of one moiety devised as aforesaid having died), filed her petition on March 10 7, 1899, asking for the removal of the trustee Wm. H. H. Raleigh, on these grounds:

(a) Because the said Wm. H. H. Raleigh has become hostile to your petitioner and has expressed his intention of relinquishing said trust;

(b) Because said Wm. H. H. Raleigh is a non-resident;

(c) Because the said Wm. H. H. Raleigh *takes no active part in the management of the estate, and the entire custody, management and control of the whole estate, including the interests of your petitioner are and have been, for and during the entire term of office of the said W. H. H. Raleigh, as such trustee, cared for exclusively by Thomas E. Waggaman the co-trustee.*

(d) Because the sureties on his bond are deceased.

On March 14 the court ordered the said Raleigh to show cause on or before March 21 why the relief prayed for should not be granted.

Twelfth. Your petitioners show, that the answer of said Raleigh filed on March 21, 1899, denies all the allegations of the petition aforesaid, except of course that of non-residence. On the same day the said Raleigh filed his petition, stating that by reason of the filing of a petition for his removal by one of the *cestuis que trustent*, Susan W. Edwards, he feels that it is a duty he owes himself to retire from the trusteeship. Wherefore he prays to be relieved. On April 26,

11 1899, the aforesaid Susan W. Edwards filed a second petition in which she recommends to the court the appointment of Mr. Jackson H. Ralston of the Washington Bar, as substituted trustee in the place and stead of William H. H. Raleigh to act jointly with Mr. Thomas E. Waggaman, trustee, in the execution of said trust. To this is appended this note: "Alice Tyler the other petitioner hereby consents to the appointment of John (should be Jackson) H. Ralston as such trustee as aforesaid.

IRVING WILLIAMSON,
Solicitor for Alice Tyler."

On the same day, April 26, 1899, the decree of this court dismissed the petition of Susan W. Edwards, and relieved the said W. H. H. Raleigh on his own petition, and decreed, "the beneficiaries having consented, that Jackson H. Ralston, be and he hereby is, appointed substituted trustee to act in the place of the said W. H. H. Raleigh, heretofore relieved, and that the said Jackson H. Ralston shall give bond with sureties approved by the court, in the sum of \$10,000, for the faithful performance of his trust, before entering upon his duties as such trustee." All which will more fully appear from said decree to which reference is hereby made, and which is prayed to be taken as part hereof.

Thirteenth. Your petitioners show that, thereafter, viz: on the 4th day of May, 1899, the said Jackson H. Ralston, with the Fidelity and Deposit Company of Baltimore, Maryland, as surety, filed their bond, in which is recited: "Whereas the said Jackson H. Ralston has been duly appointed a trustee, *in the place and stead* of W. H. H. Raleigh relieved: Now the condition of the above obligation is such, that if the above bounden Jackson H. Ralston, faithfully perform all his duties as *such* trustee, and shall in all things obey *such order and decree as this court shall make in the premises*, then the above obligation to be void and of no effect, else to be in full force and virtue;" all of which will more particularly appear from a duly certified copy of said bond herewith filed, marked Exhibit "D," and prayed to be taken as part hereof. Said original bond was duly approved by the court.

Fourteenth. Your petitioners advert again to the fact that the complaint made against the trustee Raleigh was that he took no active part in the management of the estate, and that the entire custody, management, and control of the whole estate had been for and during the entire term of office of the said William H. H. Raleigh as such trustee, cared for exclusively by Thomas E. Waggaman; as the cogent admonition to the trustee Ralston, that confidence that he would not neglect the obligation imposed by law upon him, to take an active part in the management of the estate, and would not leave the management, care and custody thereof exclusively to his co-trustee, was the particular reason for his appointment, as expressed in the petition which led thereto. Your petitioners further show, that during the whole term of office of the said Waggaman and Raleigh as trustees, after the report of sale of the real estate filed on February 17, 1892, they made no report to the court touching the trust fund resulting therefrom, and asked no instruction from the court in respect thereof; that the trustee Raleigh was allowed to resign without accounting before the Auditor or to the Court, and never has accounted; and that not only the said Raleigh
13 never offered to account, and never did account, as it was his duty to have done, but the trustee Ralston never called for any accounting, and took no steps to ascertain and determine whether the condition of the trust had been changed in any respect for the worse from what it was when the court ratified the sale reported on February 17, 1892; or if he did obtain such knowledge did not report it; and that the said trustees Waggaman and Ralston, during their whole term of office as co-trustees, never once made a report to the court touching the trust, and asked no instructions respecting the investment of the trust funds; and said Ralston took no step to ascertain whether existing investments were safe and secure and such as the court would approve. Your petitioners are advised and insist, and so charge, that by virtue of having been appointed a trustee in the above entitled cause "in the place and stead of W. H. H. Raleigh," and of having in the manner aforesaid, assumed the duties of said office, the said Ralston succeeded to the obligations and liabilities of said Raleigh and is responsible accordingly.

Fifteenth. Your petitioners state, that in the second paragraph of the petition of Jackson H. Ralston, trustee, on January 3, 1906, it is stated "that the active management of the trust was carried on by said Thomas E. Waggaman, who at stated intervals distributed to the parties concerned their shares of the income." Your petitioners are advised and insist, and so charge that it was the duty of said Ralston, (made so by law and emphasized in the petition which led to his appointment) to take an active part in the management
14 of the trust; that holding the relation he did to the trust estate, he had no right to commit the entire management of the trust to his co-trustee; that so to act was to frustrate the very reason for the appointment of two trustees instead of one; the very object of such appointment being to secure the united ability and responsibility and active participation of two instead of one, and for each to be a check upon the other.

Your petitioners, on information and belief, allege that said Ralston, as a matter of fact, took no active part in the execution of the trust, but left the same wholly to his co-trustee, and in so doing wholly neglected his own duties.

Sixteenth. Your petitioners further show that they were at no time cognizant of the manner in which the trustees Waggaman and Raleigh or Waggaman and Ralston had invested, or suffered to remain invested the trust fund in their hands; and beyond the fact that the real estate on F street between 5th and 6th streets, northwest, devised in trust as aforesaid, was shown by the report of February 17, 1892, to have been sold for \$17,460.; \$2500. cash, and the balance in three equal instalments payable in three, six, and nine years, secured by deed of trust on said property, the record in this cause imparted no information; nor has any statement ever been made to the court or to the petitioners as to what was done with the balance of the cash payment of \$2500. which remained after the payment of the indebtedness of \$1126.10. From time to time, each of your
15 petitioners received statements, as to certain interest due to each, together with checks therefor, but at no time were they or either of them informed by said trustees of the manner in which the trust fund was secured, or what security was held for it. Your petitioners confided in the knowledge and judgment of the trustees, and believed they had a right to so confide; knowing, as they necessarily did, that the trust was created because the testatrix did not consider the beneficiaries thereof competent to manage the estate provided.

Seventeenth. Your petitioners further show, that the state of affairs which disclosed the bankruptcy of the trustee Waggaman, also disclosed (as represented by the trustee Ralston to the court), the practical disappearance of the trust estate. That as a matter of fact (in addition to such interest, income or other trust funds as may have from time to time come into their hands) said Thomas E. Waggaman and William H. H. Raleigh, trustees, received, and should be charged and debited with, and required to account for, at least the following assets (as set forth above) belonging to said trust estate, namely:

Cash received from the Registry of the court.....	\$417.15
" " " " " " " "	506.54
Cralle & Fisher cash payment \$2,500.00 for the F St. property, (less \$1,126.10 being all expenses justified by the papers of record in the case)	1,373.90
Cralle & Fisher notes for the deferred payments for said F St. property, secured by deed of trust thereon	14,959.98
	<hr/> \$17,257.57

And that (in addition to such interest, income or other trust funds as may have from time to time come into their hands) said 16 Thomas E. Waggaman and Jackson H. Ralston, trustees, should be charged and debited with, and required to account for, at least an aggregate of trust assets belonging to said trust estate amounting to about the sum of \$17,257.57. The default and delinquency were so obvious that the sureties of the trustee Waggaman paid, without controversy, the sum for which they were bound, viz: \$10,000.00 to make good *protanto* the deficiency. Proceedings were instituted by said Jackson H. Ralston both for the removal of the trustee Waggaman, and the appointment in his place of Harry Lee Rust of this city; and also for the recovery of the amount of certain notes alleged to be secured on Wesley Heights, by a suit in Equity No. 25,123, against John F. Waggaman and others. The said Thomas E. Waggaman was removed and the said Harry Lee Rust appointed in his place.

Eighteenth. On January 15, 1906, the said Ralston and Rust filed their petition stating, that they had received from Arthur Peter, attorney for said John F. Waggaman, a proposition of settlement, (which is annexed as Exhibit "A" to their petition for the settlement of said notes alleged to be secured upon lots sixteen (16) to Twenty-four (24), Block 9, Wesley Heights), "and that they believe it will be to the interest and advantage of their *cestui que trustent* that said proposition be accepted, and in this behalf say that the lots are of small value and entirely insufficient to meet to the extent of more than twenty or thirty per cent. for the amount of their claim;" The offer of compromise is the payment of sixty per cent. of the amount of the debt secured: The said John F. Waggaman to acquire said lots by such payment. It is stated in said petition 17 that Thomas E. Waggaman is a bankrupt, that Katherine E. Malone, (the maker of said notes) as petitioners are informed and believe is without means; that the only solvent party to said notes is John F. Waggaman, and as his offer is sixty per cent. of the face of said notes they believe it would be advisable to accept the same, reserving the right to recover what they can in addition from Thomas E. Waggaman, as it may be possible to secure." In the petition for leave to bring suit filed in this cause January 6, 1905, by Ralston and Rust, trustees, it is stated that said lots in Wesley Heights, although purporting to stand in the name of Katherine E. Malone, were in fact held by her for the joint benefit of Thomas E. Waggaman and John F. Waggaman, and the notes hereinbefore de-

scribed were made by their direction and for their benefit. Your petitioner, Alice T. Easter, through her counsel, by letter bearing date December 12, 1905, had previously notified said Ralston, that she would accept the judgment of said Ralston, as to the expediency of making said settlement; and that in such event, the responsibility of said Ralston would be diminished to the extent of the sum so received from the said John F. Waggaman and at the same time she declined to assent to the proposition that "a beneficiary should be called on to pay the costs of suit or a solicitor's fee because the trustee is unable to produce the estate of which he is custodian and must resort to litigation for the purpose," or to release said Ralston from responsibility for the balance. On January 15, 1906, it was ordered by the court, that the trustees have leave to make the compromise with John F. Waggaman, set out in the petition.

18 Your petitioners hold said Waggaman, Raleigh and Ralston responsible as trustees for any shortage in said trust estate.

Nineteenth. In the petition of said trustee Ralston filed herein on January 3, 1906, it is stated, "that at the time of petitioner's appointment as trustee, he called upon said Thomas E. Waggaman for a list of the securities belonging to the trust and which at that time were in his possession, and was furnished with such a list; that the active management of the trust was carried on by said Thomas E. Waggaman, who at stated intervals distributed to the parties concerned their shares of the income."

In the petition of said Ralston filed herein August 29, 1904, it is stated, that at the time of his appointment as trustee, he asked said Waggaman for a statement of the condition of said trust, and received a statement of which the following is a copy:

FEB. 21ST, 1899.

Thos. E. Waggaman in Account with T. E. Waggaman and W. H. H. Raleigh, Trustees.

N. B.—Please report any errors which may occur in your account as soon as discovered.

Feb. 21.	Cralle & Fisher notes paid.....	\$9973.00	
	Loan to F. A. Moore, note dated June 24, 1887, extended to June 24, 1900, on or before, int. at 6 % secured in Woodley Park.....		\$800.00
"	Loan to F. A. Moore, notes dated Feb. 11/87 extended to Feb., 1902 on or before, secured on Woodley Park, int. at 6 %.....		1900.00
19 Feb. 21.	Loan to F. H. G. White, note dated Jan. 13/90, extended to Jan. 13/02, on or before, secured on Lot 9, Widow's Mite, int. at 6 % ...		7273.32
		<u>\$9973.32</u>	<u>\$9973.32</u>

Your petitioners state on information and belief that there is nothing of record to show, that any errors in this statement, if discovered, were reported. But if this was accepted, (as would seem to be implied) for a complete statement of the entire trust estate then, as shown by the proceedings in this cause, and by the report of February 17, 1892, more than \$7,000 remained to be accounted for, after making every deduction for expenses asserted by the trustees to be legitimate. With the figures of said report of February 17, 1892, before him, your petitioners are advised and insist, and so charge, that it was a breach of duty in said Ralston to accept the account referred to by him in his petition of August 29, 1904, as "a statement of the condition of said trust."

Twentieth. Your petitioners further show, that said Ralston in said petition of August 29, 1904, states, that "becoming alarmed on account of reports of said Waggaman's financial condition this undersigned (*i. e.*, said Ralston), has applied to said Waggaman to see the notes he was supposed to hold as trustee, and was referred to his note clerk. On speaking with her, he was shown notes numbered 6 to 14 inclusive for \$580 each executed by K. E. Malone to the order of John F. Waggaman, endorsed by John F. Waggaman and S. E. Allen, Jr., and purporting to be secured on lots 16 to 24, inclusive, in Block 10, Wesley Heights, the final endorsement on said notes being to Raleigh and Waggaman, trustees. He was also shown a note of Fannie A. Moore to William M. Hodges, endorsed to Waggaman and Raleigh, trustees, for the sum of Eight hundred (800) dollars, and purporting to be secured on Woodley Park, but the remaining notes aggregating about Ten thousand (10,000) dollars, he was not shown by said note clerk, but simply referred to said Waggaman and his attorney without being given any satisfaction whatsoever. That he has since made written demands on said Waggaman to see said notes, copies of which demands are hereto attached and marked Exhibits "A" and "B," but without response; that this trustee fears that said Waggaman has not the said notes in his possession and that since this trustee was appointed, they have been made way with by said Waggaman, in some manner unknown to this petitioner."

Twenty-first. Your petitioners further show that in a subsequent petition, by said Ralston, filed herein January 3, 1906, it is stated, that in the month of August, 1904, the petitioner "demanded and secured from said Thomas E. Waggaman all of the notes and securities in his possession, save a certain note for nearly \$10,000, which on inquiry your petitioner found had been paid to said Waggaman and the cash converted by him to his own use without the knowledge of your petitioner." And now the petitioners herein are advised, and insist, and so charge, that if as indicated in the petition of August 29, 1904, negotiable paper belonging to the trust was made way with by assignment, then it was a neglect, for which the trustee (Ralston) is responsible, to suffer the said paper to be and remain in such condition, that the said Waggaman could so dispose of it; that when said Ralston qualified as trustee it was his duty to see that all of said notes were made payable

to Waggaman and Ralston, trustees, so as to be in such shape, that said Waggaman could not make way with, or assign them, without the co-operation of his co-trustee; that it was the duty of said Ralston to require that all securities belonging to the trust estate, should be kept in a safe deposit box, or in some safe place of deposit, under the joint custody and control of the co-trustees, whence they could not be removed without the consent and co-operation of both; and to see that any and every payment was made to the trustees, and deposited to their joint credit as trustees; and in every way to exercise control over the trust, in accordance with the duty he, the said Ralston, assumed; and that to fail to do this was a breach of trust. On information and belief your petitioners aver that there was no note belonging to the trust, in the sum of \$10,000, or for about that sum but that a F. H. G. White note for \$7273.32; two F. A. Moore notes, one for \$1,000 and the other for \$900, and a F. A. Moore note for \$800, and nine K. E. Malone notes for \$580.00 each (on one of which is a credit of \$233.34) constitute the only notes reported as endorsed to the order of Waggaman and Raleigh, trustees, and that said F. A. Moore note for \$800 and said K. E. Malone notes are the only ones which said Ralston actually received, and that no notes or securities were payable to or endorsed

22 to said Waggaman and Ralston, trustees, or stood in their names at any time.

Twenty-second. Your petitioners further state, on information and belief, that the original deed of trust from Cralle and Fisher, for the security of the deferred payments on the realty devised in trust as aforesaid, was made on March 29, 1893, (and recorded April 24, 1893) Liber 1804, folio 288, to Messrs. Darlington, Spencer and Williamson to secure \$14,959.98, represented by three notes to the order of Waggaman and Raleigh, trustees, bearing date March 29, 1893, each for the sum of \$4,986.66, payable on or before, three, six and nine years after date, at the office of Thomas E. Waggaman; the first seems to have been paid on or about three years after date, and the second and third would seem to have been paid in 1899. The Release of said Deed of Trust was made February 27, 1899, and recorded March 1, 1899, in Liber 2372, folio 224. Your petitioners therefore show, that the report made by Waggaman to Ralston of February 21, 1899, and by Ralston reported to the court on August 29, 1904, as a statement of the condition of said trust, only purported to account for a sum equal to two-thirds of said deferred payments, and omitted said balance of cash payment altogether.

Twenty-third. Your petitioners on information and belief further show, that the most superficial inquiry would have disclosed the fact, that all the investments of the trust funds, now alleged by said Ralston, were investments in the business and in the interest of Thomas E. Waggaman; and as such, inadmissible investments for a trust fund; that Katharine Malone, the maker of one set of

23 notes, and F. A. Moore, the maker of others, were both clerks in Waggaman's office, and of no financial responsibility; that F. H. G. White was an agent and brother-in-law of Henry P. Wag-

gaman (brother of Thomas E. Waggaman) and that the chief interest in said lot nine (9), Widow's Mite was that of Thomas E. Waggaman; that in the petitions filed by said Ralston, as heretofore stated, it is recited, that the Wesley Heights property in reality is that of Thomas E. and John E. Waggaman; that the same is true of the greater part of Woodley Park.

Twenty-fourth. Your petitioners further show, that the title to the real estate known as "Woodley" or "Woodley Park" by deed recorded January 17, 1887, in Liber 1231 folio 68 *et seq.*; by deed recorded February 7, 1887, in Liber 1225, folio 330 *et seq.*; and by deed recorded March 7, 1887, in Liber 1246, folio 36 *et seq.* was placed in Fannie A. Moore, who contemporaneously executed deeds of trust, the 1st recorded in Liber 1231, folio 66 *et seq.*; the 2nd recorded in Liber 1225, folio 337, and the 3rd recorded in Liber 1246 folio 6, to secure the deferred payments of purchase money thereon. Thereafter the said Fannie A. Moore by deed of trust made June 24, 1887, and recorded June 27, 1887, in Liber 1268, folio 138, and delivered to Thomas E. Waggaman August 4, 1887, conveyed to Irving Williamson and Samuel A. Waggaman the property described in the deed recorded in Liber 1225, folio 330 *et seq.* to secure to William M. Hodges \$35,000, represented by her forty promissory notes, bearing even date, ten for \$500 and thirty each for \$1000. And your petitioners, on information and belief

24 aver, that the note of said Fannie A. Moore to William M. Hodges originally for \$1,000, but by payment of \$200 thereon, reduced to \$800, and alleged by said Ralston to have been finally assigned to Waggaman and Raleigh, trustees, is included in these notes.

Twenty-fifth. Prior to the deed last mentioned, viz: by deed of trust made on February 11, 1887, and recorded February 11, 1887, in Liber 1234 folio 136, said Fannie A. Moore conveyed the property described in Liber 1225 folio 330 *et seq.* to Henry D. Boteler and Charles E. Banes, in trust to secure \$25,000, to Luther S. Fristoe, represented by 17 notes, payable on or before two years, with interest at 6%; two notes for \$5,000 each, and fifteen for \$1,000 each.

On information and belief your petitioners aver that the two notes of Fannie A. Moore, aggregating \$1900, (one of them having been reduced to \$900 by the payment of \$100 thereon) payable to the order of Luther S. Fristoe, and purporting to be endorsed to Waggaman and Raleigh, trustees, are included in these notes. Thereafter deeds of release were executed to be hereinafter more particularly mentioned, releasing in part at least, the realty conveyed to secure the notes of said Fannie A. Moore made payable to the order of William M. Hodges. By deed of release, made October 10, 1901, recorded October 11, 1901, in Liber 2594, folio 209, Charles E. Banes, surviving trustee released all the land conveyed to secure the notes of said Fannie A. Moore made payable to the order of Luther S. Fristoe, and in doing so recited—"the notes representing said indebtedness having been marked 'paid' and 'cancelled,' " which

25 recital as a matter of fact is not correct—said two notes aggregating \$1,900.00 originally for \$1,000, each (one of

them having been reduced to \$900 by payment of \$100 thereon) not having either of them been paid or cancelled or so marked.

Twenty-sixth. Thereafter, to wit: on the 22nd of September, 1904, Britannia W. Kennon and Augustus Jay, filed their bill in Equity No. 24,921, against Thomas E. Waggaman and others.

Notwithstanding the fact that the principal of the notes to said Luther S. Firstoe was wholly unpaid, the seventh paragraph of the bill states, that prior to the purchase of said notes as set forth in the 5th paragraph the defendants Thomas E. Waggaman and John Ridout, trustees, sold certain portions of the land conveyed in trust to secure said notes, and obtained releases for the same from the said trust deed; the eighth paragraph avers, that subsequent to the purchase of said notes by plaintiffs, other releases from said deed were made by direction of said Waggaman, and on the 10th of October, 1901, Charles E. Banes, the surviving trustee, by deed recorded in Liber 2594, folio 209, executed a full release of said trust, it is averred in said bill that said deed of trust had been released without the knowledge or consent of the plaintiffs, and in fraud of their rights, and the prayer is for a reinstatement of the said deed of trust. The said Thomas E. Waggaman answered the bill and admitted that the notes described in the bill, and intervening petitions, had not been paid, and that the deed of trust securing said

26 notes ought to be reinstated, the same having been erroneously released. He states that the sum secured by said deed of trust has been reduced by payment to \$17,650, of which \$5,000 is held by Augustus Jay; \$5000 by Cardinal Gibbons; \$5000 by Britannia W. Kennon; \$750 by Ann C. Phillips. "The remainder belonged to the MacPherson estate, now represented by J. H. Ralston, trustee;" evidently referring to the two notes aggregating \$1900 purporting to be endorsed to Waggaman and Raleigh, trustees, as heretofore mentioned. The said answer admits that prior to said final release recorded in Liber 2594 folio 209, other releases of said trust had been made, "but care was always taken to leave ample security to cover the notes outstanding thereunder."

The trustee Ralston would seem to have been in error then when he stated in effect, that these two notes, components of the balance mentioned by him, had been paid.

Twenty-seventh. Thereafter, to wit: on the 24th day of September, 1904, Joseph F. Byrne, Britannia W. Kennon and others filed another bill of complaint, against Thomas E. Waggaman and others, being Equity No. 24,927, averring the conveyance in trust heretofore recited by Fannie A. Moore to secure William M. Hodges \$35,000, and again averring, that although said notes had not been paid, the said deed of trust had been released without the plaintiffs' knowledge or consent, and praying for the reinstatement of said deed of trust. "The said releases are recorded respectively in the Land Records of the District of Columbia, on March 6, 1900; in Liber 2472 folio 276; June 14, 1900, in Liber 2508 folio 161, and October

27 11, 1901, in Liber 2594 folio 208." The answer of said Thomas E. Waggaman avers that said trust had not been wholly released, but that enough of said land remained, sub-

ject to the liens thereof to amply secure the payment of all the notes mentioned in the original bill and others of the same series, including the one originally \$1,000 reduced by payment to \$800, held by "Jackson H. Ralston and another, trustees, for the estate of Tyler," by which is evidently intended the estate held in trust for your petitioners.

Twenty-eighth. Your petitioners further show, that on or about the 22nd day of August, A. D. 1905, H. Rozier Dulany, trustee in Bankruptcy of Thomas E. Waggaman, filed his bill in Equity, (No. 25,649) against Thomas E. Waggaman and others, (the said Jackson H. Ralston being made one of the defendants thereto), in which the said trustee in bankruptcy prays that the real estate known as "Woodley" may be sold under the order and direction of said court, and the proceeds of the sale or sales of said real estate distributed under the direction of the court to the parties in interest, according to their several and respective rights and priorities. In paragraph 40 of said bill averment is made of said Equity suit No. 24,921, brought by Britannia W. Kennon and others, and the averment made, that "the papers, records, and books of account of the said Thomas E. Waggaman, now in the possession of this complainant (Dulany) show, according to the report of said expert accountants, that said notes have not in fact been paid, and that others of said notes, also unpaid, aggregating \$1900 are held by defendants Eugene Ives, Daniel B. Clark, and John W. Pilling." Your petitioners are

28 advised, and insist, and so charge, that the averment that said notes, "aggregating \$1900," are held by Ives, Clark and Pilling is a mistake, and that as shown by the defendant Thomas E. Waggaman, in his answer in said Equity cause No. 25,649, the same are endorsed to Waggaman and Raleigh, trustees, and are the notes spoken of by him as part of the MacPherson estate; that is, part of the estate held in trust for your petitioners; and that it is the duty of said Ralston, as party to said suit, to have this error corrected and to take whatever step is necessary to protect the interest of your petitioners in all the proceedings relating to the sale of said realty and the distribution of the proceeds.

Twenty-ninth. Your petitioners further show, that paragraph 41, of the bill filed by said Rozier Dulany, makes averment of the suit filed by Joseph T. Byrne, Britannia W. Kennon and others against Thomas E. Waggaman and others, Equity 24,927, in which said Waggaman states, that one of the notes secured by said trust deed recorded in Liber 1225 folio 330 is a note for \$800, held by said "Jackson H. Ralston and another trustees of estate of Tyler." In said paragraph 41 it is stated, "That defendant Jackson H. Ralston and another, to this complainant (Dulany) unknown hold one of said notes for \$500 (evidently a typographical error for \$800) as trustees of the estate of one Tyler, also to this complainant (Dulany) unknown. It is further in Dulany's bill, stated; "The said records also show that but \$600 has been paid on the principal of said debt of \$35,000, and that there remains due and unpaid of said debt the sum of \$34,000." It is further stated in said paragraph 41 of said bill, "That said deed of trust has not been released as to any part of block one (1) in said Thomas E. Wagga-

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man and John Ridout, trustees', Addition, but is still a first lien thereon." Your petitioners are advised and so charge that it is the duty of said Ralston to have said allegation corrected as to said \$800 note, and to take whatever step is necessary to protect the interest of your petitioners in all proceedings relating thereto.

Thirtieth. Your petitioners are informed and believe, and on such information and belief allege and charge that a very large part of the property conveyed by said Fannie A. Moore to said Henry D. Boteler and Charles E. Banes by said Deed of Trust dated February 11, 1887, and recorded February 19, 1887, in said Liber No. 1234, folio 136 *et seq.* in trust to secure her certain notes as aforesaid, and that a very large part of the property conveyed by said Fannie A. Moore to said Irving Williamson and Samuel Waggaman by said Deed of trust dated June 24, 1887 and recorded June 27, 1887 in said Liber No. 1268 folio 138, *et seq.* in trust to secure her certain notes as aforesaid, (before any part of the trust funds, or trust estate, purports to have been, or is pretended to have been, invested in notes secured by said respective deeds of trust) had been released of record from the effect and operation of said respective deeds of trust by various deeds of release recorded in Libers 1331, folio 170; 1317 folios 418 and 420; 1320 folios 321 and 322; 1342 folio 128; 1351 folios 70, and 71 and 72 and 74; 1352 folio 72; 1376 folios 222 and 224; and 1500 folio 387. Each of said re-

leases containing the recital "with the consent of the party
30 secured as is evidenced by the signature hereto of Thomas E.

Waggaman, the agent of the present holders of the notes secured" or equivalent words.

Thirty-first. Your petitioners are also informed and believe, and on such information and belief your petitioners allege and charge that after all pretended investments of trust funds were made, the bulk of the remaining property conveyed by said two deeds of trust respectively recorded in said Liber No. 1234, folio 136 *et seq.*, and in said Liber No. 1268 folio 138 *et seq.* and respectively securing the aforesaid notes of said Fannie A. Moore in and by a series of releases dated and recorded as follows: (*i. e.* a release dated March 1, 1900 recorded March 6, 1900 in Liber No. 2472, folio 274 *et seq.*; a release dated March 5, 1900 and recorded March 6, 1900 in Liber No. 2472 folio 276 *et seq.*; a release dated June 9, 1900 and recorded July 14, 1900 in Liber No. 2508 folio 161 *et seq.*; a release dated June 9, 1900 and recorded July 14, 1900, in Liber No. 2508 folio 163 *et seq.*, and a release dated October 10, 1901, and recorded October 11, 1901, in Liber 2594 filio 208 *et seq.*) was released from the effect and operation of said respective deeds of trust recorded in said Liber No. 1234 folio 136 *et seq.*, and in said Liber No. 1268 folio 138 *et seq.*, respectively: said releases recorded in said Liber 2472 folios 274 and 276 recite: "the remainder of the property being deemed sufficient security for the debt secured by said deed of trust, as is evidenced by the signature hereto of Thomas E. Waggaman, the party se-
cured;" and said releases recorded in said Liber 2508 folios
31 161 and 163 recite:—"the debt secured having been partially paid, and the remainder of the property being deemed suffi-

cient security for the balance of the debt secured by said deed of trust, as is evidenced by the signature hereto of Thomas E. Waggaman the present holder of the note"; and finally in and by a deed of release dated October 10, 1901, and recorded October 11, 1901 in Liber No. 2504 folio 209, Charles E. Banes surviving trustee under the said deed recorded in Liber 1234 folio 136 *et seq.*, released and conveyed the whole of the property by said trust conveyed unto Thomas E. Waggaman and John Ridout, trustees, their heirs and assigns forever "fully released and discharged from the effect and operation of said deed of trust"—reciting—"the debt secured thereby having been fully paid, the notes representing said indebtedness having been marked 'paid' and 'cancelled.'"

Thirty-second. In this connection your petitioners allege and charge that said notes aggregating \$1,900.00 secured by said deed of trust recorded in said Liber 1234 folio 136 *et seq.*, in which their trust funds are pretended to have been invested, have never been *paid* nor *cancelled*, nor has said note for \$800, secured by said deed of trust recorded in said Liber 1268 folio 138 *et seq.* in which their trust funds are pretended to have been invested ever been paid or cancelled; but that all of said notes remain wholly unpaid and uncanceled, and that all recitals or statements to the contrary are untrue. That neither the said Waggaman, nor their said trustees, nor any one or more of their said trustees had any right to release,

32 or to allow to be released, any part of the security for any pretended investment of said trust estate, but should have prevented anything of the sort from being done; whether such trustee or trustees deemed the remainder of the property sufficient security for debt secured or not. That said Thomas E. Waggaman had no right to sign releases containing any such recitals, and his co-trustees had no right to permit him to do so. That he was not the agent of your petitioners, and certainly was not the agent of your petitioners for any such purpose. That said Thomas E. Waggaman was not the party secured, and was not the agent for the then holders of the notes last above mentioned, and the recitals in said releases are without the knowledge and consent of, and are without any warrant or authority whatsoever from your petitioners, and are untrue, and his co-trustees, during their respective co-trusteeship, should have seen to it that no such conduct, or acts, concerning the trust estate as are set forth in this petition (long continued as the same has been) should or could have occurred.

Thirty-three. Your petitioners further allege and show that after her said deed of trust of February 11, 1887, to secure Luther S. Fristoe, and after her said deed of trust of June 24, 1887, to secure William M. Hodges, the said Fannie A. Moore by deed dated July 14, 1887, and recorded July 27, 1887, in Liber 1269, folio 324 *et seq.* conveyed all the real estate conveyed to her by the aforesaid deeds recorded in Liber 1246, folio 36; Liber 1225, folio 330, and Liber 1231, folio 68, to Thomas E. Waggaman and John Ridout, in trust: 1st. To subdivide the same in their discretion; 2nd. To sell

33 said property or any part thereof in their discretion; 3rd. To dispose of the proceeds of the sales thereof in accordance with a written agreement of even date therewith. Said written agreement is Exhibit H. R. D. No. 2, to the bill in Equity No. 25,649, and shows that Thomas E. Waggaman, John F. Waggaman and Henry P. Waggaman were the beneficial owners under said deed of trust recorded in Liber 1269, folio 324.

Thirty-four. Your petitioners are informed and believe, and upon such information and belief, allege, charge and show, that after the releases hereinbefore mentioned and referred to, said Thomas E. Waggaman and John Ridout, Trustees, by subsequent conveyances, encumbered the property which was so released with various new deeds of trust to secure new loans and (among others) made, executed, and placed upon said property which had been released from said encumbrances as aforesaid the following deeds of trust, namely: a deed of trust dated March 3, 1900, and recorded in Liber 2472, folio 278, to Arthur T. Brice and William J. Flather to secure \$45,000.00 represented by certain notes of James B. Nicholson, payable to the order of, and endorsed by Thomas E. Waggaman; and a deed of trust dated May 21, 1900, and recorded in Liber 2480, folio 231 to said Arthur T. Brice and William J. Flather to secure \$62,600.00 represented by certain notes of said James B. Nicholson payable to the order of and endorsed by said Thomas E. Waggaman; and a deed of trust dated June 25, 1901, and recorded in Liber 2580, folio 152, to said Arthur T. Brice and William J. Flather to secure \$35,000.00 represented by certain notes of said James B. Nicholson payable to the order of, and endorsed by said Thomas E.

34 Waggaman; and a deed of trust dated October 10, 1901, and recorded in Liber 2594, folio 298, to said Arthur T. Brice and William J. Flather to secure \$125,000.00 represented by one note of said James B. Nicholson payable to the order of, and endorsed by said Thomas E. Waggaman; and a deed of trust dated June 2, 1904, and recorded in Liber 2809, folio 413, to said Arthur T. Brice and William J. Flather to secure \$17,700.00 represented by one note of said James B. Nicholson payable to the order of, and endorsed by said Thomas E. Waggaman; and a deed of trust dated June 13, 1904, and recorded in Liber 2819, folio 203, to said Arthur T. Brice and William J. Flather to secure \$40,000.00 represented by certain notes of James B. Nicholson payable to the order of, and endorsed by said Thomas E. Waggaman; and a deed of trust dated July 25, 1904, and recorded in Liber 2842, folio 13, to George E. Hamilton and Irving Williamson to secure the Catholic University of America in the sum of \$876,168.96.

All of said Libers in which said deeds, deeds of trust, releases and conveyances are alleged or stated to be recorded are Land Records of the District of Columbia.

Your petitioners do not at present know whether the note concerning which said Thomas E. Waggaman (by his said report of February 21st, 1899), reported to said Ralston as follows, viz:—"Feb'y 21 Loan to F. H. G. White, note dated Jan'y 13/'90, extended to Jan'y 13/'02 on or before, secured on Lot 9 Widow's Mite, int. at

6% \$7,273.32" has ever been in fact paid, or not; nor do they at present know what has become of said note mentioned or referred to in the language above quoted. Your petitioners are, however, in-

35 formed and believe, that the note thereby intended to be referred to is a certain note originally made by said F. H. G.

White for the sum of \$7,333.33 (which on or before February 21, 1899, had been reduced to \$7,273.32) dated January 13, 1890, and originally payable to the order of Henry Smith one year after date, and subsequently extended to Jan'y 13, 1902, and is one of the notes mentioned in, and secured by, said deed of trust, from said F. H. G. White to said Irving Williamson and John Ridout dated Jan'y 13, 1890, and recorded Feb'y 18, 1890, in said Liber 1462 folio 309 *et seq.* And your petitioners are further informed and believe that said \$7,273.32 note, or said balance (\$7,273.32) of said \$7,333.33 note, had not been in fact paid unto said trust estate in which your petitioners are interested or unto said Waggaman and Raleigh trustees, or unto said Waggaman and Ralston, trustees, or unto either of said trustees, on December 14th, A. D. 1902, or at any time prior to that date. And your petitioners are further informed and believe that said trust estate never has at any time, down to the present, received said sum of \$7,273.32, or the proceeds in whole or in part of said note, either from payment thereof or from sale thereof, and yet your petitioners, notwithstanding an exhaustive search and inquiry on their behalf, have been unable thus far to find said note, or to find out what became of it. In this connection your petitioners say that the time of payment of said note having been extended to January 13th, 1902, said Ralston then, and thereafter, could and should have required the payment of said note to himself and his co-trustee, and the deposit of the amount, or proceeds, thereof to their joint credit

36 as trustees, and the re-investment of the corpus or principal arising therefrom in some good and safe security or securities satisfactory to himself and to the Court; and both before and after said note was to be paid should have required the same to be kept either in a safe deposit box, or other safe place of deposit, in the joint possession and under the joint control of himself and his co-trustee so that neither trustee could do anything with said note, or with the proceeds or fruits thereof, without the knowledge, co-operation and approval of the other. And your petitioners further say that said Ralston did nothing of the kind, and that his not doing so was negligence on his part, and was an acquiescence on his part in whatever for the time being was the existing status, and made him responsible and liable equally with, and as fully as, his co-trustee, Thomas E. Waggaman, for all losses and consequences flowing therefrom.

At the time said Ralston qualified as such trustee (*i. e.*, May 4th, A. D. 1899) said F. A. Moore \$800.00 note was then payable on June 24, 1900; and said two F. A. Moore notes aggregating \$1,900.00 were then payable on February 11, 1902; and said Malone notes were dated February 13, A. D. 1899, and were payable three years after date. And in this connection your petitioners as to

each and all of these notes say that all that is alleged in the last preceding paragraph, as to the note therein mentioned, and as to said Ralston's duties and liabilities concerning the same, is equally true of, and applicable to, the notes mentioned in this paragraph, and as to said Ralston's duties and liabilities concerning the same, and your petitioners ask that said allegations and statements be taken,
37 considered and treated as made as to said notes mentioned in this paragraph in the same manner as if here repeated.

Your petitioners say that, freely acknowledging their lack of instruction in the law, it seemed to both of them, that in Equity and good conscience, the said Ralston as well as the said Waggaman should be held accountable for the estate, which was in the custody of both, and your petitioner Alice Tyler Easter, inquired of the said Ralston if such was not the case, and was answered by him that such was not the case. Not being convinced by this reply, and finding herself upon this question in antagonism to said Ralston, and her interest in antagonism to his, through her counsel Leigh Robinson with whom she consulted, she at first verbally, and afterwards in a writing bearing date December 12th, 1905, stated to said Ralston, that she held both himself and Mr. Thomas E. Waggaman responsible as trustees for the whole estate of the beneficiaries. Thereafter, viz: on December 20th her said counsel received from the said Ralston a letter stating that on the 19th instant he had resigned as trustee in this cause, and had obtained a reference to the Auditor for a settlement of his accounts. On the 22nd instant her said counsel, for the first time, saw the order made December 19, and immediately obtained an order setting aside the same, and on the same day, wrote to said Ralston to state what had been done. On December 23rd her said counsel received from said Ralston a communication, notifying him that on December 29th he would apply to the Court to pass an order identical with the one vacated: and
38 among other things therein containing the following: "I am at all times ready to account for every piece of property that came to my hands as trustee and can go further and account for the various notes, of which it might be supposed I constructively became the possessor and which had been taken by Mr. Waggaman months or years previously." On the same day her said counsel replied and, among other things after quoting the foregoing said: "I will certainly thank you if you will furnish me with copies of each or all of the above notes." Replying on the 26th instant, the said Ralston states: "The notes which I received from Mr. Waggaman are on file with Mr. Rozier Dulany in the Waggaman case and are open to your inspection." A reply to this letter by one from her said counsel bearing date of December 28th, 1905, closes the correspondence. Copies of said letters marked exhibit "E," are herewith filed and prayed to be taken as part hereof.

On information and belief, your petitioners aver, that the "tangled web," which the trustee in bankruptcy, the said Rozier Dulany is attempting to unravel is such that whatever is involved therein is exposed to protracted litigation; that they are informed and believe, and on information and belief aver, that the counsel in Equity

Suits 24921 and 24927, are not pressing for decrees therein, because of the difficulty of adjudicating at this time between the rights of complainants and the rights of others claiming to have loaned large sums of money on the faith of the releases which appear upon the record. Your petitioners are advised and insist and so charge, that in Equity and good conscience, they should not be compelled to
39 take investments so involved in this imbroglio of litigation, or be subjected to the labor and expense necessary to ascertain and become possessed of any possible value they may still have, but that the trustees responsible for the investments, so improperly made in the business of one of the fiduciaries, should be held accountable for the whole balance, remaining due, over and above the \$10000 secured from the sureties of T. E. Waggaman and the sum which may be received by way of compromise from John F. Waggaman.

Your petitioners are advised, and allege and charge that it was improper for said Waggaman and Raleigh, Trustees during their co-trusteeship, or for said Waggaman and Ralston, trustees, during their co-trusteeship, or for either of said Trustees during his trustee-ship either to make an investment, or to continue an investment, of any part of the trust estate, in any note or notes in which one of the trustees was interested; or in any note or notes secured upon property in which property one of the trustees was interested; or in any note or notes secured upon property by a third trust, or by a second trust, or by any trust other than a trust constituting a first lien upon such property; or in any note or notes secured upon property constituting an insufficient security, or upon property part of which having been released as security, the balance constituted an insufficient security; or in any note or notes to which the trustees for the time being would not acquire and have a good, straight and regular title, with a good, straight and regular title for the property securing the same; or in any note or notes or securities used in the
40 business of, or for the benefit of, or belonging to said trustees for the time being, or either of said trustees. And it was equally improper for said trustees, or for either of said trustees, to permit any part of the property securing any note or notes in which any part of the trust estate was pretended to have been invested to be released from the operation and effect of the deed of trust securing the same. Yet your petitioners are informed and believe, and accordingly allege and charge that (with the exception merely of the Cralle and Fisher notes which were given by the purchasers for their deferred payments upon their purchase of F Street property) each of said trustees so acted as to all other pretended investments of the trust estate. And with the exception of said Cralle and Fisher notes, all other pretended investments were in notes which at the times of making such pretended investments were the property of said Thomas E. Waggaman, or treated by him as his property, and said Thomas E. Waggaman was, at such times, as well as for some time before and since, either the owner of, or largely and beneficially interested in, the property upon which said notes were secured and that the trust funds pretended to have been

invested in said notes were received and used in the business of, and for the benefit of said fiduciary, Thomas E. Waggaman, and that a considerable part of the property described in the respective deeds of trusts securing said notes was released from the operation and effect of such, deeds of trusts before said pretended investments, and a considerable additional part of the property described in said respective deeds of trust securing said notes was released from the operation and effect of such respective deeds of trust after

41 said pretended investments, and in at least one case all of the property described in one of said deeds of trust securing certain of said notes was after said pretended investment released from the operation and effect of said deed of trust, and in the case of the F. A. Moore notes your petitioners are informed and believe and therefore allege and charge that said pretended investments in an \$800.00 note and in two notes aggregating \$1,900.00 were secured only on second and third trusts respectively, and your petitioners allege and charge that said pretended investments were and are all of them insufficiently secured. And your petitioners further allege and charge that said Waggaman and Raleigh, Trustees, and said Waggaman and Ralston, Trustees, and each of said trustees, either had actual or constructive notice of, all releases of property held as security for any pretended investment of trust funds.

Your petitioners are advised, and insist and so charge, that when the trustee Ralston succeeded to the trustee Raleigh, it was the duty of the former to ascertain the exact condition of the trust fund and the sufficiency of all securities therefor, and if any part of it had been misappropriated or insufficiently secured, improperly or improvidently invested, to charge the retiring trustee, and his co-trustee therewith, in settlement with them, and that failure to do this was culpable negligence; that if wrongful acts of his co-trustee had been already committed, it was the duty of the said Ralston to take measures by suit or otherwise to compel correction thereof or restitution therefor; that it was the duty of said Ralston to ascertain

42 the actual facts, and not rely upon the bare assertion of his co-trustee in relation to the condition of the trust fund: that the moment he was constituted trustee, it became his duty to make it impossible for his co-trustee to receive and misapply the trust fund; and in pursuance thereof to require investments to be made in the names of himself and his co-trustee, Waggaman and the title to existing investments transferred to and put in the names of himself and said Waggaman, as trustees so that the papers secured could not be transferred without the action of both: that if said Ralston wished to secure himself against losses by reason of investments which might prove unprofitable or worthless, he should have obtained authority from the Court having jurisdiction of the cause; that if without the direction of the court be made, or suffered to be made, or suffer- to continue an investment upon improper or inadequate security, which an ordinarily prudent man would not have made, then he is liable for a consequent loss; that if the said Ralston permitted his co-trustee Waggaman to take the entire management, control and possession of the trust property, the former is equally

with the latter liable; that if with the concurrence and consent of the said Ralston, the duties of the trust were exclusively performed by the co-trustee Waggaman the said Ralston should be held accountable for the conduct and management of his co-trustee to whom he so improperly delegated his power, exactly as if said Ralston had himself done such things; and the fact that the said Ralston confided in the pecuniary ability and personal integrity of his co-trustee is no justification of his neglect of his own duty. Your petitioners

43 charge that their said trustee Ralston did fail to perform his fiduciary duty in all the ways, whether of commission or omission pointed out in this petition.

To the end, therefore, that the defendants to this petition may upon their several and respective corporal oaths full, true, direct, and perfect answer make to the allegations, statements and charges in this petition contained, and to the several interrogatories hereinafter numbered and set forth—that is to say:

1. Is the F. H. G. White note mentioned in said report of February 21st, 1899, as dated January 13, 1900 and extended to January 13, 1902, and as secured on lot 9 Widow's Mite, one of the notes secured by said deed of trust dated January 13, 1890, and recorded February 18, 1890 in said Liber 1462, folio 309 *et seq.*?

2. If so, which of said notes mentioned in said deed of trust is it?

3. Is it the first note mentioned in said trust?

4. Was it as originally made a note of F. H. G. White, date January 13, 1890, for \$7,333.33 and payable to the order of Henry Smith one year after date?

5. When and how was it curtailed or reduced from its original amount (\$7,333.33) to a note for said balance of \$7,273.32, and who was the owner of said note at the time of such reduction?

6. Who made and paid such part payment thereof, and who received the same?

7. Was said note ever owned by the Catholic University of America, and if so during what period was it owned by, or did it belong to, said University?

44 8. Was it a note for the full amount of \$7,333.33 during the whole time it was owned by, or belonged to said University? If not what was its then amount?

9. Was said note ever owned by Gen'l L. P. Graham, and if so during what period was it owned by, or did it belong to said Graham?

10. Was it a note for the full amount of \$7,333.33 during the whole time it was owned by, or belonged to said Graham? If not what was its then amount?

11. What were the exact indorsements upon said note which transmitted title to it from one owner to another?

12. Was it indorsed so as to be payable to said Waggaman and Raleigh, trustees, or to their order?

13. Was it ever indorsed so as to be payable to said Waggaman and Ralston, trustees, or to their order?

14. Was the sum of \$7,273.32 in funds of the trust estate put into the purchase of said note, or used to purchase said note? If not what sum was so applied?

15. Was said note ever paid in whole or in part after being pur-

chased for the trust estate? If so, when, and by whom, and to whom, and how much, if anything, was paid after that time, and what was done with, or became of, such money so paid?

16. Did the Trust estate ever receive the same, or any part thereof? If so, how much, and when and in what manner?

17. Was said note ever sold, or transferred to any other owner after being purchased for the trust estate? If so, when, and
45 by whom, and to whom, and for what consideration and what was done with or became of the consideration for such sale or transfer?

18. What has become of said note?

19. What, if any, information can you give concerning said note, which will throw light upon its whereabouts, or aid in finding or discovering it? Answer fully and give all information you can upon this subject?

20. Have the two F. A. Moore notes dated February 11, 1887 aggregating \$1,900.00 (one for \$1,000.00, and the other originally for \$1,000.00, but reduced to a balance of \$900.00 by a credit entered thereon of \$100 on January 11, 1887) ever been paid after being purchased for the trust estate? If so, when, and by whom, and to whom, and what was done with, or became of any money so paid upon them or either of them?

21. Are they marked "Paid" or "cancelled"?

22. Has the F. A. Moore note dated June 24, 1887 (originally for \$1,000.00, but reduced to a balance of \$800.00 by a credit of \$200.00 entered on said note November 29, 1890) ever been paid after being purchased for the trust estate? If so, when, and by whom, and to whom, and what was done with, or became of, any money so paid upon said note?

To which end your petitioners pray as follows, namely:—

1st. That the persons hereinafter named as defendants to this petition may be made defendants to the same.

2nd. That the defendants Thomas E. Waggaman and William
46 H. H. Raleigh shall account to this court for all of said trust estate which came into their hands during their co-trusteeship; and that they, and each of them, respectively, shall be held responsible for any and all loss, deficiency, insufficiency or inadequacy during their said co-trusteeship, and for any bad or improper investments during that time.

3rd. That the defendants Thomas E. Waggaman and Jackson H. Ralston shall account and the defendant Jackson H. Ralston for himself as trustee and for said Waggaman shall account, to this court for the whole trust estate during the period of their co-trusteeship; and that they, and each of them, respectively, shall be held responsible for any and all loss, deficiency, insufficiency or inadequacy during their said co-trusteeship, and for any bad or improper investments made or continued during that time.

4th. That the defendant Jackson H. Ralston, trustee, shall also account to this court for himself and his present co-trustee, Harry L. Rust, for the whole trust estate during the period from the removal of said Thomas E. Waggaman as his co-trustee down to the time when said Ralston may be relieved of his present trusteeship.

To which end your petitioners pray for process against said defendants Thomas E. Waggaman and William H. H. Raleigh as late trustee and in their capacities as set forth in this petition, and against said defendant Jackson H. Ralston, as trustees and in his capacities as set forth in this petition (they being defendants to this petition), requiring them, and each of them, to appear and answer the exigency of this petition and to answer the foregoing interrogatories.

47 5th. And your petitioners pray for such other and further relief in the premises as the nature of the case may require, and to the court may seem meet and proper.

ALICE T. EASTER.

DISTRICT OF COLUMBIA, ss:

I, Alice Tyler Easter, being first duly sworn depose and say, that I have heard read the foregoing petition by me subscribed and that the matters and things therein alleged of my own knowledge are true, and the matters alleged on information and belief, I believe to be true.

ALICE T. EASTER.

Subscribed and sworn to before me this 3rd day of March, 1906.

[SEAL.]

M. A. SCHEELE,
Notary Public, D. C.

LEIGH ROBINSON &
CONWAY ROBINSON,

Solicitors for Mrs. Alice Tyler Easter.

G. W. S. MUSGRAVE,

For Miss Susan W. Edwards.

48

EXHIBIT "B."

Filed March 3, 1906.

Bond of Jackson H. Ralston, Trustee.

Filed May 9, 1899. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

In Equity. No. 7907, Docket —.

SUSAN W. EDWARDS

vs.

CHAPMAN MAUPIN.

Know all men by these presents, That we, Jackson H. Ralston as principal and The Fidelity and Deposit Company of Baltimore, Maryland, all of the District of Columbia, acknowledge ourselves indebted to the United States of America in the penal sum of Ten

thousand (\$10,000.00) dollars, for the payment of which we bind ourselves and every of our heirs, executors, and administrators, jointly and severally, for and in the whole. Sealed with our seals, and dated this 4th day of May, A. D. 1899.

Whereas the said Jackson H. Ralston has been duly appointed a trustee in the above-entitled cause in the place and stead of W. H. H. Raleigh, relieved.

Now, the condition of the above obligation is such, that if the above-bounden Jackson H. Ralston shall faithfully perform all of his duties as such trustee and shall in all things obey such order and
 49 decree as this court shall make in the premises, then the above obligation to be void and of no effect; else to be in full force and virtue.

JACKSON H. RALSTON. [SEAL.]
 FIDELITY AND DEPOSIT COMPANY
 OF MARYLAND,
 Per EDWIN WARFIELD, *President*. [SEAL.]
 (10¢ I. R. Stamp.)

Attest:

H. E. BALES, *Secretary*.

Approved this 9th day of May 1899.

[SEAL.]

CHAS. C. COLE,
Asso. Justice, S. C. D. C.

A true copy.

Teste:

J. R. YOUNG, *Clerk*,
 By F. E. CUNNINGHAM,
Ass't Clerk.

50

EXHIBIT "C."

Filed March 3, 1906.

Bond of W. H. H. Raleigh, Trustee.

Filed November 12, 1890. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

In Equity. No. 7907, Docket 21.

SUSAN W. EDWARDS ET AL.

vs.

CHAPMAN MAUPIN.

Know all men by these presents, That we, Wm. H. H. Raleigh principal and Joseph Renshaw and George J. Johnson, sureties, acknowledge ourselves indebted to the United States in the penal sum of ten thousand dollars, for the payment of which we bind ourselves

and every of our heirs, executors, and administrators, jointly and severally, for and in the whole. Sealed with our seals, and dated the day and year aforesaid.

Whereas the said William H. Raleigh has been duly appointed by decree passed in this cause on October 17th 1890 trustee, in conjunction with Thomas E. Waggaman under will of Mary E. MacPherson, in place of James B. Green.

Now, the condition of the above obligation is such, that if the above-bounden Raleigh shall in all respects discharge his duty as such trustee, and under said decree and shall in all things obey such order and decree as this court shall make in the premises,
 51 then the above obligation to be void and of no effect; else to be in full force and virtue.

Teste:

G. W. S. MUSGRAVE	} as to	W. H. H. RALEIGH.	[SEAL.]
JOHN ROSE,		JOSEPH RENSHAW.	[SEAL.]
R. L. HALL,		GEO. J. JOHNSON.	[SEAL.]

As to Geo. J. Johnson.

Approved 12 November 1890.

[SEAL.]

CHAS. P. JAMES,
Justice, S. C. D. C.

A true copy.

Test:

J. R. YOUNG, *Clerk*,
 By F. E. CUNNINGHAM,
Ass't Clerk.

Endorsed.

STATE OF MARYLAND, *City of Baltimore*, ss:

I, G. Evett Reardon, a Commissioner for the District of Columbia, in Maryland, in the City of Baltimore, do hereby certify that Wm. H. H. Raleigh, the principal to the Bond herein, personally appeared before me in the City aforesaid, the said Wm. H. H. Raleigh, being personally well known to me to be the person who executed said Bond, and acknowledged that he executed the same for the purposes therein stated.

52 Given under my hand and official seal, this 31st day of October, A. D. 1890.

[SEAL OF COMMISSIONER.]

G. EVETT REARDON,
*A Commissioner of Deeds for District of Columbia,
 in the State of Maryland, Residing at Baltimore
 City, 33 Lexington Street.*

STATE OF MARYLAND, *City of Baltimore*, ss:

I, G. Evett Reardon, a commissioner for the District of Columbia, in Maryland, in the City of Baltimore, do hereby certify that Joseph

Renshaw one of the sureties on the Bond herein, personally appeared before me in the City aforesaid, the said Joseph Renshaw, being personally well known to me to be the person who executed said Bond as surety, and acknowledged the execution thereof. And the said Joseph Renshaw being duly sworn according to law, deposes and says that he is worth the sum of Ten Thousand Dollars (\$10,000.00) in real estate, over and above all debts and liabilities whatsoever.

Given under my hand and official seal, this 31st day of October, A. D. 1890.

[SEAL OF COMMISSIONER.]

G. EVETT REARDON,
*A Commissioner of Deeds for District of Columbia,
 in the State of Maryland, Residing at Baltimore
 City, 33 Lexington Street.*

53

EXHIBIT "D."

Filed March 3, 1906.

Bond of Thomas E. Waggaman, Trustee.

Filed October 25, 1890. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia, the 24th Day of October, 1890.

In Equity. No. 7907, Docket —.

SUSAN W. EDWARDS ET AL.

vs.

CHAPMAN MAUPIN.

Know all men by these presents, That we, Thomas E. Waggaman principal, and Daniel B. Clarke and John W. Pilling, sureties, all of the District of Columbia, acknowledge ourselves indebted to the United States in the penal sum of ten thousand dollars, for the payment of which we bind ourselves and every of our heirs, executors, and administrators, jointly and severally, for and in the whole. Sealed with our seals, and dated the day and year aforesaid.

Whereas the said Thomas E. Waggaman has been duly appointed, by decree passed in this cause on October 17th, 1890, trustee in conjunction with W. H. H. Raleigh, under will of Mary E. Macpherson, in place of James B. Green.

Now, the condition of the above obligation is such, that if the above-bounden Waggaman shall in all respects discharge his duty as

54 such trustee, and under said decree and shall in all things obey such order and decree as this court shall make in the premises, then the above obligation to be void and of no effect; else to be in full force and virtue.

THOS. E. WAGGAMAN. [SEAL.]
 DAN'L B. CLARKE. [SEAL.]
 J. W. PILLING. [SEAL.]

Witness:
 ———.

Approved Oct. 25, 1890.
 [SEAL.]

A. C. BRADLEY, *Justice.*

A true copy.

Test:

J. R. YOUNG, *Clerk*,
 By F. E. CUNNINGHAM,
Ass't Clerk.

55 EXHIBIT "E" No. 1.

Filed March 3, 1906.

1333 F STREET N. W.,
 WASHINGTON, D. C., *December 12, 1905.*

Jackson H. Ralston, Esq., Bond Building, City.

DEAR SIR: As stated in my conversation with you, some weeks ago, I have felt constrained to advise my client, Mrs. Easter, that both yourself and Mr. Thomas E. Waggaman, as trustees, are responsible for the whole estate of the beneficiaries, which should now be intact. The situation, as presented by the papers you have filed, would indicate that the estate of the beneficiaries was left, practically, in the exclusive custody and control of your cotrustee, and he disposed of it as if it was his own. This doubtless arose because of your explicit confidence in him; and if this were sufficient to exonerate yourself, I would take pleasure in so advising Mrs. Easter. But with the light before me, I am unable to so advise her.

As regards the offer of John F. Waggaman to compromise the suit against him for \$3,000, Mrs. Easter can do no better than accept your judgment as to what is the safest action to take so far as his liability is concerned. Whatever it is in your power to recover from him, it is in my opinion your duty as trustee, to recover; and your responsibility would be diminished to the extent of such recovery.

56 Whatever you fail to recover from him you will be liable for yourself.

Inasmuch, as I would expect the court to hold that you are responsible for what should now be coming to the beneficiaries, I cannot think a beneficiary should be called on to pay the costs of suit or a solicitor's fee, because the trustee is unable to produce the

estate of which he is custodian and must resort to litigation for the purpose.

Yours truly,

— — —.

57

EXHIBIT "E" No. 2.

Filed March 3, 1906.

Ralston & Siddons, Attorneys & Counsellors at Law, Washington,
D. C., Bond Building.

DECEMBER 19, 1905.

Leigh Robinson, Esq., Washington, D. C.

DEAR SIR:

Edwards *v.* Maupin. Equity. No. 7907.

I think it proper to state to you that I have to-day resigned as trustee in the above entitled case and have asked the Court to refer my accounts for settlement to the Auditor, and an order for this purpose has been passed. I shall ask the Auditor to fix a time to take up the matter.

Very truly yours,

J. H. RALSTON.

R-H.

58

EXHIBIT "E" No. 3.

Filed March 3, 1906.

1333 F STREET N. W., CITY, *December 22d*, 1905.

Jackson H. Ralston, Esq., Bond Building.

DEAR SIR: To-day I had the opportunity for the first time to become acquainted with the contents of the order obtained by you on the 19th instant, accepting your resignation as trustee in Edwards *v.* Maupin, Eq. 7907, and granting a reference to the Auditor to state among other things the proper allowance to be made you for solicitors' fees. Had you notified me so that I could have had an opportunity to be present, I would have opposed the motion for the order. Therefore to-day immediately after reading it, I went into court and had the same vacated.

As stated to you in my letter of the 12th instant, your *cestui que trust* Mrs. Easter, holds you as well as your co-trustee Waggaman liable for the estate, and further does not recognize your right to a solicitor's fee for producing the estate for which you are responsible. She objects to your relinquishment of your trusteeship before she can submit her view as to your accountability. She will probably do this before the end of the ensuing week.

Yours truly,

.

— — —.

59

EXHIBIT "E" No. 4.

Filed March 3, 1906.

Ralston & Siddons, Attorneys & Counsellors at Law, Washington,
D. C., Bond Building.

DECEMBER 23, 1905.

Leigh Robinson, Esq., Washington, D. C.

DEAR SIR:

Edwards v. Maupin.

I have before me yours of December 22nd. In resigning and obtaining the order of reference to the Auditor, the question of a determination of a proper solicitor's fee was reserved, my understanding being that Mrs. Easter could object to the allowance of any if she saw fit to do so. Furthermore, before I could be relieved from responsibility, she would have had the opportunity before the Auditor of presenting any possible objection she might have to my account. In view of the foregoing, I am at a complete loss to understand any ground for objection to the order as taken or why it should have been set aside. In addition I may add that I asked the Auditor yesterday to notify you and Miss Edwards of the time he might fix for stating the account.

I am at all times ready to account for every piece of property that came to my hands and can go further and account for the
60 various notes of which it might be supposed I constructively became the possessor and which had been taken by Mr. Waggaman months or years previously. I decline to account for the solvency of such notes, and, if you can inform me of any reason or authority making me responsible for the errors of judgment of a prior trustee, I should be greatly obliged.

I enclose herewith motion for reference to the Auditor.

Notwithstanding the setting aside of the order accepting my resignation, I shall decline to act further as trustee in the premises, excepting so far as is incidental to turning over any property I may have to my successor. Our firm shall consider further entering its disappearance in the case of Rust and Ralston against Waggaman, so that, if you or any one else care to appear for Mr. Rust, there will be nothing in the way.

Very truly yours,

J. H. RALSTON.

R-H.

Enclosure.

Filed March 3, 1906.

1333 F STREET N. W., CITY, *December 23d*, 1905.

Jackson H. Ralston, Esq., Bond Building, City.

Dear Sir: Yours of December 23d, 1905, enclosing copy of motion, and notice thereof, which notifies me, that you will call on said notice on Friday, December 29th, is just received. I believe the trial named comes during the holidays. Should it happen, that Justice Anderson might hold no court on that day, I request, that you let me know of any subsequent time, at which you may intend to call up the same, as I desire, whenever it is heard, to be present and oppose the granting thereof.

It is expected shortly to institute in behalf of Mrs. Easter, proceedings asserting among other things her rights and claims against you, and the cause should not be referred to the Auditor, or your status, as trustee or liability to be proceeded against in any way as such trustee, or your right to prosecute and duty to prosecute the case of Rust and Ralston *v.* Waggaman, in Equity No. 25123, as such trustee, be in any way changed, altered or acted upon, until the entire controversy is developed before the court, and in shape for a reference to the Auditor, not piece meal, but as a whole. Further-

more, I think you should not be allowed to resign, or be relieved either of your duties or your liabilities as trustee in any respect until your liability and your responsibility has first been adjudicated. The right of the court to proceed against you in any way, as a trustee or officer of the court should not be relinquished, diminished or affected; as it might be were your resignation now accepted; or before it is ascertained, how, to what extent, or in what manner you might be proceeded against for any duty, liability, or delinquency which may be established against you.

I note in your letter of this date you say: "I am at all times ready to account for every piece of property that came to my hands, and can go further and account for the various notes of which it might be supposed *I constructively became the possessor and which had been taken by Mr. Waggaman, months or years previously.*" I will certainly thank you if you will furnish me with copies of each or all of said notes, at your earliest convenience. By so doing you will greatly oblige,

Yours truly,

— — —.

63

EXHIBIT "E" No. 6.

Filed March 3, 1906.

Ralston & Siddons, Attorneys & Counsellors at Law, Washington,
D. C., Bond Building.

DECEMBER 26, 1905.

Leigh Robinson, Esq., Washington, D. C.

DEAR SIR:

Edwards v. Maupin.

I have before me your note of December 23d.

I shall press for a disposition of the pending motion on Friday or the first available occasion thereafter. I find myself placed in an intolerable situation in being trustee for a person who is dissatisfied with my actions and I propose to terminate the relation as quickly as possible. I shall assuredly sign no more checks as trustee and take no further action in that capacity.

My firm, as you know, has started a suit for the benefit of the trusteeship and I shall seek to be relieved from any responsibility in this connection as quickly as may be. One who is unwilling to recognize the propriety of my action as trustee should not be expected to submit to my action as attorney.

64 Other attorneys to whom application has been made have been unable to see the ground of Mrs. Easter's complaint and have refused to act for her. As you take a different view of the matter, I think I am justified, in all fairness as one member of the bar to another, to ask that you kindly inform me on what theory you think I am responsible to Mrs. Easter, and upon what precedent your belief is founded. I confess I am unable to discover any grounds for such reliability.

It seems to me that the information above requested should be furnished before any action should be taken on your part which would have a tendency, however unsustained it might be, to injure another member of the bar.

The notes which I received from Mr. Waggaman are on file with Mr. Rosier Dulaney, trustee in the Waggaman case, and are open to your inspection. Two of the notes which Mr. Rust and myself received on investment which we have made are in the National Metropolitan Citizens Bank for collection, and one is with the Union Trust Company for the same purpose.

Very truly yours,

J. H. RALSTON.

R-H.

65

EXHIBIT "E" No. 7.

Filed March 3, 1906.

1333 F STREET N. W.,
WASHINGTON, D. C., December 28, 1905.

Jackson H. Ralston, Esq., Bond Building, City.

DEAR SIR: I have to-day your letter of yesterday. You refer to Mrs. Easter as a person who is dissatisfied with your actions, wherefore you propose to terminate the relation you sustain to her as quickly as possible. I am unaware of anything said to you by Mrs. Easter to which these words can be applied, unless you refer to the difference of opinion expressed by myself, as to the principles upon which you should account. So far from expressing dissatisfaction with your action in the suit against John F. Waggaman, she has, through me, expressed satisfaction therewith, and will only express dissatisfaction in case of the non-action, which you threaten.

You speak of my taking a step "which would have a tendency, however unsustained it might be, to injure another member of the bar." It does not occur to me, that a difference of opinion on a legal question need be anything but an honest difference. Certainly I have intended no injury to you unless a difference of opinion, as to the principle on which you should account be so considered by you.

As heretofore stated to you both verbally and in writing,
65 the principle upon which Mrs. Easter will expect you to account is that you, as well as Mr. Waggaman, are responsible for the whole estate of which both of you were trustees. This seems to me to be a principle of Equity and good conscience, and I am satisfied you will find authority for it in the nearest text book on the subject. I am not prepared at this time to argue the question either before you or before the court. My time indeed, has been occupied by the duty of insisting upon the right of Mrs. Easter to be so much as heard before the question is decided. Perhaps I can at no time expect to bring over to my view a trustee who differs, you will pardon me for saying, who, so passionately differs from his *cestui que trust*; but before a dispassionate tribunal, at the proper time, when the question is properly at issue, I will hope to be able to submit views worthy of consideration at least. At that time, the court may decide that you are right, that she is wrong. Whatever may be the ultimate decision, Mrs. Easter has an unquestionable right to submit her contention to the court in advance of action by the court.

You say you find yourself "placed in an intolerable situation," in being required to remain as trustee under the circumstances. I must confess myself at a loss to understand, why any trustee should consider it "intolerable," to be required to account for his trust before he is suffered to resign it; nor am I astute enough to see why any trustee should deem it "intolerable," for the principles upon which he should account to be adjudicated in advance by the court having jurisdiction of the cause, in which he is accountable. No

action should be taken, until her petition, setting out her case has been filed.

Yours truly,

67 *Amended Answer to Petition of Edwards and Easter.*

Filed October 24, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 7907.

SUSAN W. EDWARDS ET AL.

vs.

CHAPMAN MAUPIN.

The amended answer of Jackson H. Ralston, Trustee, to the petition of Susan W. Edwards and Alice Tyler Easter respectfully shows—

1, 2, 3, 4. He believes the averments as to the citizenship and residence of the petitioners is correct, and presumes the same is true as to the other recitals of fact therein contained.

5. Answering the 5th paragraph of said petition, he says that so far as they go, he has no doubt that the statements therein contained are truthful, but that there is in said paragraph an unaccountable suppression of what appears to him to be a material fact, that is to say, that the decree appointing Waggaman and Raleigh trustees provided as follows: "Each trustee shall be responsible only for his own default," thereby limiting his responsibility to acts of which he should himself be guilty and not making one trustee responsible for the acts of the other. That this decree in such form was expressly assented to in writing by the petitioner Alice Tyler Easter

68 and assented to in fact, as respondent is informed and believes, by the attorneys for Susan W. Edwards. That the importance of the statement above quoted appears when it is borne in mind that the whole petition is an attempt to hold this respondent responsible for acts with which he had no association whatsoever.

6. Answering the 6th paragraph of the petition, this respondent says that he admits the truth of the allegations contained in the 6th paragraph of the petition.

7. Answering the 7th paragraph of the petition, this respondent admits the truth of the averments therein contained.

8. Answering the 8th paragraph of the petition, this respondent admits the truth of the allegations therein contained.

9. Answering the 9th paragraph of the petition, this respondent says that he admits the truth of the statements therein contained as to the contents of the petition filed on behalf of Waggaman and Raleigh and as to the allegations concerning the decree therein referred to, and at the same time stating that they are immaterial so

far as he is concerned. That he admits that no suit was ever brought by him to recover the rent alleged to have accrued between January 31, 1891, and March 3, 1891, more than eight years before his appointment as trustee, and further answering says that no demand of any kind was ever made to have such suit brought, and that, on information and belief, he says no such suit was ever brought by Waggaman and Raleigh on the bond of said Green or any steps taken to secure the same out of the purchase money deposited in the registry of said court.

69 10. Answering the 10th paragraph of the petition, this respondent says that he admits that according to the record the trustees Raleigh and Waggaman filed the petition referred to in this petition, making the statements set forth in said paragraph 10, and that a decree was passed authorizing Waggaman and Raleigh to make sale of the real estate in question and directing them to report any sale for the approval of the court, and he admits that on February 17, 1892, a sale was reported to the court as set forth in said paragraph 10, and on information and belief he says that he presumes that such sale took place, and he admits that on February 17, 1892, said sale was ratified and confirmed.

11, 12. Answering the 11th and 12th paragraphs of the petition, this respondent says he admits that the petitioner, Susan W. Edwards, asked the removal of W. H. H. Raleigh on the grounds therein set forth, and he admits that she recommended the appointment of this respondent as substituted trustee in the place of said Raleigh to act jointly with Thomas E. Waggaman in the execution of the trust, and he admits that the grounds upon which the removal of said Raleigh was asked were as set forth in paragraph 11, and he admits that Alice Tyler Easter consented to the appointment, and he admits the other allegations of said paragraph with relation thereto.

13. Answering the 13th paragraph of the petition, this respondent admits the filing of his bond in the place of W. H. H. Raleigh substantially as set forth in the petition, which bond was duly approved.

70 14. This respondent, answering the 14th paragraph of the petition, says that it does not appear from the record that W. H. H. Raleigh was removed, as is therein implied, because the estate was cared for exclusively by Thomas E. Waggaman and he does not understand that he has received any "cogent admonition" either from the court or from the petitioners with relation to the manner in which he should exercise his trust, and he says that the suggestion that W. H. H. Raleigh was removed because of failure to take an active part and that such removal for that cause was the particular reason for the appointment is a disingenuous statement of the facts as they appear of record, said Raleigh having been relieved simply upon his own petition. He admits that during the term of office of Waggaman and Raleigh as trustees, after the report of sale filed February 17th, they made no report to the court touching the trust fund and asked no instructions from the court in respect thereto, and that the trustee Raleigh was allowed

to resign without accounting to the Auditor of the court and never has accounted, and he says that such resignation without accounting took place with the tacit or express consent of the attorneys for the two petitioners, who at all times had it in their power to require an accounting had they considered that one was due or necessary. That it is true that this respondent never called for any accounting and took no steps to determine whether the conditions of the trust had been changed in any respect from what it was when the court ratified the sale reported on February 17th and that he did not consider he had any power to audit the past accounts of Waggaman and Raleigh, and that in addition he was assured by the attorney for

71 the petitioner Susan W. Edwards that he and she were satisfied with the condition of affairs up to the date when he became trustee. That, as hereinafter set forth, he did acquaint himself with the then present condition of the trust at the time he became trustee. That he had no reason to believe, and did not then believe, and does not now believe, that the accounts of said Raleigh and Waggaman were in any degree in a wrongful condition. That he is informed and believes that the petitioners received, during all the period from the appointment of Waggaman and Raleigh as trustees up to the time of the removal of said Raleigh, regular semi-annual accounts showing the condition of the trust, and he is further informed and believes that they never at any time objected to said statements of account as being in any degree erroneous or the securities as inadequate or improper. That while every investment or change of investment which has been made in the trust fund since this respondent has been trustee has been made with express direction and approval of the court first had and obtained, this respondent has not presumed to act as a critic of the investments made or the manner of their making prior to the time he became trustee, leaving that duty to the parties in interest and their attorneys of record.

15. Answering the 15th paragraph of said petition, this respondent states that he did say that for a long time during his trusteeship "the active management of the trust was carried on by said Thomas E. Waggaman who at stated intervals distributed to the parties concerned their share of the income." That this statement was true,

72 but that the active management consisted of nothing more than receiving the interest as it became due and distributing it, as no change of investment occurred during the time this respondent and said Waggaman were co-trustees, although an embezzlement by said Waggaman did take place as this respondent is informed and believes. That, however, all interest due the petitioners was paid them as it accrued, except as hereinafter set forth. That at that time said Waggaman was a man of high standing in the business community of Washington and looked upon as a man of large wealth and in every respect responsible, and that he considered that the interests of all parties concerned were as safe in his hands, so far as the holding of securities and the distribution of the income was concerned, as they would have been in any bank or trust company, and that in point of fact all the income received was

properly disbursed through said Waggaman, his defaults being not in this respect, but in other respects hereinafter to be pointed out, and all of his defaults which occurred during the time this respondent was co-trustee with him being covered by the sum of \$10,000 paid as hereinafter set forth by his sureties, save as to part of the possible deficiencies in loans made virtually to himself. That the rest of said paragraph being wholly argumentative, this respondent does not undertake to answer it.

16. This respondent, for answer to the 16th paragraph of the petition, says upon information and belief that it is absolutely untrue that the petitioners were at no time cognizant "of the manner in which the trustees Waggaman and Raleigh or Waggaman and
73 Ralston had invested, or suffered to remain invested, the trust fund in their hands," but to the contrary says that at the time of his appointment he was informed by Mr. G. W. S. Musgrave, attorney for the petitioner Susan W. Edwards, that he was satisfied with the then existing investment of the trust fund, and that the petitioner Alice Tyler Easter has told him that she was constantly kept informed, through semi-annual statements, of the manner in which her funds were invested and at one time she made complaint against this respondent that he had not informed her continually of the investment of the funds as had always been done, as she explained, semi-annually by Mr. Waggaman, in response to which this respondent gave her a detailed statement showing the condition of her funds and investments made, sending the same, as he remembers, to the remaining petitioner Susan W. Edwards. That the letter books of said Waggaman confirm the statements above made, containing as they do copies of the various accounts sent to the petitioners, and copies thereof covering the time during which this respondent was trustee are attached hereto and marked "Exhibit A." That this respondent has no personal knowledge with reference to the disposition of the \$2500.00 referred to in said 16th paragraph as it came into the hands of the then trustees eight years before he became trustee in this case, but that he is informed and believes that \$1000.00 of it was paid as a fee to Mr. Leigh Robinson, solicitor for the petitioners in this case. That no application has ever been made to him to pursue the balance of the funds or to cause legal investigation to be made to determine whether said sum of \$1000.00 was properly paid or not.

17. Answering the 17th paragraph of the petition, this re-
74 spondent says that he does not undertake to say for what sums the trustees Waggaman and Raleigh should or should not be accountable, but that it is untrue that this respondent should be chargeable for the sum of \$17,257.75 as no such sum in cash or notes or anything else has ever come to his hands either actually or by any construction of law however forced. He admits that the sureties of the trustee Waggaman paid, without controversy, the sum of \$10,000, which was all for which they were liable, and the circumstances and purpose of such payment will be made more evident hereafter. He admits that he commenced proceedings for the removal of Waggaman and for the appointment of Harry Lee

Rust and also for the amount of certain notes secured on Wesley Heights, and that said Waggaman was removed and said Rust appointed. That this respondent has no personal knowledge whatsoever as to the trust funds which came into the hands of Waggaman and Raleigh during the trusteeship, but that on information and belief derived from examination of the records in this case, he says they were at one time chargeable with \$17,257.57. That he has been informed by the attorney for W. H. Raleigh and believes that of this amount of money, all cash received by said trustees over and above the sum of \$14959.98 was properly disbursed by them for the benefit of the petitioners herein and with the petitioners' knowledge and consent, but as to the details thereof he has no knowledge.

18. Answering the 18th paragraph of the petition, this respondent admits that said paragraph in substance states the purpose of the institution of the suit against John F. Waggaman, *et al.*, and
75 proceedings had therein, and in substance states the contents of the letter of Alice Tyler Easter of December 12, 1905, and that she said in such letter that she declined to assent to the proposition "that the beneficiary should be called on to pay the costs of suit or solicitor's fee because the trustee is unable to produce the estate of which he is custodian and must resort to litigation for that purpose," but that said statement was absolutely false in law, as the said respondent had at the time exactly the same estate, evidenced by some of the same notes, that he had received, constructively or actually, when he became trustee and the purpose of the suit was to realize thereon.

19. Answering the 19th paragraph of the petition, this respondent says that he admits the correctness of the quotation from his petition herein of January 3, 1906, save that through some omission in said petition he only referred to one of the two pages of account handed him by said Waggaman. That a full and correct statement of the condition of the trust as furnished him by Waggaman at the time this respondent became trustee is as follows:

WASHINGTON, D. C., *Ap'l* 4, 1899.

Thomas E. Waggaman, Real Estate Broker and Auctioneer, No. 917 F. Street, N. W., in Account with Thos. E. Waggaman and W. H. Raleigh, Trustees.

N. B.—Please report any errors which may occur in your account as soon as discovered.

F. H. G. White note due *Ap'l* 1st, 1899..... 4986.66

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<p><i>Ap'l</i> 1. Loan to K. E. Malone, notes dated Feb'y 13/99 for 3 years, secured on lots 16 to 24, Sq. 10, Wesley Heights, inter- est payable semi-ann. @ 6%.....</p>	<p>4986.66</p>
<p>4986.66</p>	<p>4986.66</p>

Eight notes of \$580 each and one for 346.66 held at office for collection of interest and principal—You will receive interest on the above notes from Ap'l 1st to Aug. 13/99. It is agreed that these notes may be paid at any time, with interest to date of payment.

THOS. E. WAGGAMAN.
T.

Cralle and Fisher notes paid.....	9973.32	
Feb'y 21. Loan to F. A. Moore, note dated June 24, 1887 extended to June 24, 1900 on or before interest @ 6%—Secured on Woodley Park..	800.00	
“ 21. Loan to F. A. Moore, notes dated Feb'y 11, 1887 extended to Feb'y 11-1902 on or before, secured on Woodley Park, interest @ 6%....	1900.00	
“ 21. Loan to F. H. G. White, note dated Jan'y 13/90 extended to Jan'y 13, 1902 on or before, secured on lot 9 Widow's Mite, interest @ 6%....	7273.32	
	<hr/>	<hr/>
	9973.32	9973.32

You will receive interest semi-annually on \$9973.32 from Feb'y 21/99. Notes in above transaction held at office for collection of interest and principal.

THOS. E. WAGGAMAN.
T.

77 That this error was perfectly obvious and must have been known to the petitioners at the time of their filing their petition herein, but for some reason unaccountable to this respondent has been absolutely ignored therein. That said account shows that said Waggaman accounted for Fourteen Thousand, Nine Hundred and Fifty-Nine and 98/100 (14,959.98) Dollars, exactly the amount of the deferred Cralle and Fisher notes referred to in paragraph 17 of the petition, and that, as this amount was at all times accounted for to the petitioners during the existence of the Waggaman and Raleigh trust, the statement contained in paragraph 19 that “more than \$7,000.00 remained to be accounted for after making every deduction for expenses asserted by the trustees to be legitimate” is a statement which must have been known by the petitioners to be wrongful when they made it.

20. Answering the 20th paragraph of the petition, this respondent says that the statements therein contained, in so far as they quote the language of this respondent, appear to be correct.

21. Answering the 21st paragraph of the petition, this respondent says that the first quotation made from this respondent's petition filed January 3, 1906 is correct save that he himself erred apparently in referring to a certain note for nearly Ten Thousand (10,000.00) Dollars when he should have referred to

notes for nearly Ten Thousand (10,000.00) Dollars. That if all the other statements made in said paragraph are correct, they would be of no purpose or value in this connection inasmuch as no possible

78 loss has occurred to the estate because of the fact that the notes in the possession of said Waggaman were not endorsed formally to Waggaman and Raleigh, Trustees. That the fact is that the notes which were made way with by said Waggaman were that of F. H. G. White for Seven Thousand, Two Hundred and Seventy Three and $32/100$ (7,273.32) Dollars and that of Fannie A. Moore for Nineteen Hundred (1900.00) Dollars, making a total of Nine Thousand, One Hundred and Seventy Three and $32/100$ (9,173.32) Dollars plus interest due, on the larger note for six months ending July 13, 1904 and on the smaller note for the six months ending August 11, 1904. That the sum total, therefore, of principal and interest which was not accounted for by said Waggaman, but which was accounted for by his sureties, was Nine Thousand, Four Hundred and Forty Eight and $51/100$ (9,448.51) Dollars. That in addition, said sureties paid the further sum of Five Hundred and Fifty One and $49/100$ (551.49) Dollars, making a total of Ten Thousand (10,000.00) Dollars, the latter amount being applicable to any other defaults or deficiencies for which said Waggaman may justly be accountable, with, of course, interest on the sums named from the dates mentioned as the expiration of semi-annual periods on said notes up to the date of settlement by said sureties. That the remaining notes, to wit, one note of F. A. Moore for \$800 and nine notes of K. E. Malone for \$580.00 each less a credit of \$233.34 on one, duly came to the hands of this trustee and have been proven in the bankruptcy proceedings of Thomas E. Waggaman. That the only notes reported as endorsed to the order of Waggaman and Raleigh, trustees, so far as this respondent has any knowledge are the notes described in paragraph 19

79 of this answer, and that the only notes received by this respondent in his own hands were all the notes above mentioned except that of F. H. G. White for Seven Thousand, Two Hundred and Seventy Three and $32/100$ (7,273.32) Dollars and that of Fannie A. Moore for Nineteen Hundred (1900.00) Dollars, and that no notes were made payable to Waggaman and Ralston, trustees or stood in their names except that the title to all of said notes was vested in them by the order of court herein appointing this respondent as one of the trustees.

22. Answering the 22d paragraph of this petition, this respondent admits the truth of the allegations contained in the 22d paragraph of the petition, but as to the cash payment referred to reiterates the information and belief that the same was disbursed by Waggaman and Raleigh for the benefit of the petitioners and with their full knowledge and consent.

23. Answering the 23d paragraph of the petition, this respondent says that he has no reason to believe that superficial inquiry or any inquiry would have disclosed the fact that the investments of the trust funds were investments in the business and interests of Thomas E. Waggaman. That he had no personal knowledge whatsoever that Katherine Malone and F. A. Moore were clerks in Waggaman's

office and of no financial responsibility. That he never knew or had reason to believe until the petition was read that F. H. G. White was a relative of a brother of Thomas E. Waggaman and that he had never heard the suggestion made that Lot 9, Widow's Mite, belonged to Thomas E. Waggaman. That he did not discover until long after the bankruptcy of Thomas E. Waggaman that Wesley Heights property was in reality owned by Thomas E. and John F. Waggaman, and he knew nothing of the fact and had no reason to suppose that Thomas E. Waggaman owned the greater part of Woodley Park.

24. Answering the 24th paragraph of the petition, this respondent on information and belief admits the truth of the allegations therein contained with reference to the recordations therein referred to and admits that he holds the note of Fannie A. Moore for \$800.00 secured on Woodley Park, the same, however, being filed in the bankruptcy proceedings of Thomas E. Waggaman.

25. Answering the 25th paragraph of the petition, this respondent says that he admits, on information and belief, the allegations therein contained with reference to the history of the deed of trust recited, but that the same is entirely immaterial, the notes therein referred to having been paid by the payment to this trustee of Ten Thousand (10,000) Dollars made by the sureties of Thomas E. Waggaman.

26. Answering the 26th paragraph of the petition, this respondent, on information and belief, admits that the recitals of fact substantially correctly state the condition of the record referred to, but that he does not admit that any part of the notes in question are represented by him as trustee for the McPherson estate, as he now claims no interest whatsoever under this trust, the notes in question having been fully covered by the payment of Ten Thousand (10,000.00) Dollars to him by the sureties of Thomas E. Waggaman.

27. Answering the 27th paragraph of the petition, this respondent says that he admits that the statements therein contained are correct statements of the condition of the record.

28. Answering the 28th paragraph of the petition, this respondent admits that the statements contained in the petition are correct statements, so far as the condition of the record in equity No. 25649 are concerned, but he denies that he has, or claims to have or own notes aggregating Nineteen Hundred (1900.00) Dollars which are said to be held by defendants, Eugene Ives, Daniel B. Clark and John W. Pilling, and he says he has no knowledge whatsoever as to who in fact holds any such notes. That he as trustee does not have them and that their proceeds have been accounted for in the settlement of Ten Thousand (10,000.00) Dollars made to him by the sureties of said Waggaman. That it is not his duty to have any error as to said notes corrected or take any steps to protect the interest of the petitioners in the distribution of proceeds so far as said notes for Nineteen Hundred (1900.00) Dollars are concerned, the petitioners having no interest therein.

29. Answering the 29th paragraph of the petition, this respondent says that he admits the truth of the statements therein contained relative to equity causes No. 24927 & 25,659. That he has filed an answer in said causes which will enable him to protect the interest

of the petitioners so far as the note for \$800.00 is concerned, and that he is mystified by the suggestion that it is his duty to have an allegation corrected as to said \$800.00 note, unless the petitioners
82 are referring to a typographical error of no possible concern.

30. Answering the 30th paragraph of the petition, this respondent admits the correctness of the statements therein contained relative to matters of record in the Recorder of Deeds' office, and he calls attention to the fact that the last of the releases set forth were executed many years before this respondent became trustee, and he has no personal knowledge with relation to the matter therein set forth, except as furnished by the record.

31. Answering the 31st paragraph of the petition, this respondent says that he admits that releases were executed and recorded as therein set forth and containing the recital given. That such releases were executed without his knowledge, active or constructive, and pursuant to a misrepresentation of facts indulged in by said Thomas E. Waggaman, and, if it is intended to refer to the note of Nineteen Hundred (1900.00) Dollars, said averments are immaterial inasmuch as said note has been accounted for by the sureties of said Waggaman as hereinbefore set forth.

32. Answering the 32d paragraph of the petition, this respondent says on information and belief that the notes aggregating Nineteen Hundred (1900.00) Dollars in which the petitioners were formerly interested have been paid and settled for to him by the payment from the sureties of Thomas E. Waggaman as hereinbefore set forth. That the note for \$800.00 has not been so paid and cancelled and its history has been hereinbefore set forth. That so far as his knowl-

edge and belief is concerned, repeating himself, he says that
83 the only one of said notes still existent is for \$800.00. That

as a matter of law, he admits that Waggaman alone had no right to allow any part of the trust security to be released. As a matter of law he admits that Waggaman had no right to sign releases containing false recitals. That as a matter of law he contends that the suggestion is absurd that Waggaman's "co-trustee had no right to permit him (said Waggaman) to do so," because he says that Waggaman's co-trustee had no control over anything he might do when his back was turned. That as a matter of law, he admits said Waggaman was not the agent of petitioners for any such purpose and was not the only party secured and not the agent for the then holders of the notes above mentioned. That he neither admits nor denies that the recitals in the releases were without the knowledge and consent of the petitioners, and if they consider such statements material, prays they may be held to strict proof thereof.

33. Answering the 33d paragraph of the petition, this respondent admits that said paragraph correctly states the condition of the record so far as it goes.

34. Answering the 34th paragraph of the petition, this respondent says that he, on information and belief, admits that the recitals contained in the 34th paragraph as to the condition of the record in the Recorder of Deeds' office are correct, and further answering said paragraph, he says that at the time of the changes of record set forth, he had no personal knowledge of them and could not be

charged with any constructive knowledge. That as to the White note, payment therefor has been made by the sureties and this respondent has no means of knowing whether it exists in a tangible
84 shape at the present time or not. That this affiant had no reason to inquire as to the payment of the note at its maturity as long as the interest was kept up, as in point of fact it was, and that the allegations with reference to said note are immaterial, it having been fully accounted for. That in point of fact, every note which has or could have come to the physical possession of this respondent at any time during his trusteeship has been fully accounted for, although, as will hereinbefore appear, many of them have not been realized upon. That he does not feel that it is material to follow the learned exposition as to the duties of trustees indulged in by the petitioners further than to absolutely deny, and to declare that the allegation is without the slightest circumstance of truth to support it, that this respondent had any intimation or supposed intimation or apparent intimation that he had any association whatever with any borrowing of money for himself or for any co-trustee, or had any knowledge that any such transaction took place, until after the bankruptcy of said Waggaman, or had any reason to suppose the same to be the case, or had any special means of knowing the fact, and the further suggestion that he knew actually or was bound to know constructively that the property upon which the notes were secured had been released by the wrongful action of Thomas E. Waggaman is false.

Further answering said paragraph, this respondent says that at the time he became trustee, he called upon Thomas E. Waggaman for a full statement of the funds of the properties in his hands and
85 received the same and had no reason to suppose that such statement was incomplete and no reason to suppose that any of the notes held at that time by said Waggaman were invested for the benefit of said Waggaman, and even if he had taken physical possession of said notes there was nothing about them that would have excited his suspicion or induced him to believe that they were insufficiently secured. That the investments were all made long prior to his becoming trustee and with the apparent sanction of both of the *cestui que trustent*, who had, as this respondent believes, fuller knowledge than he had of all the facts at or about the time of the making of the investments and who never complained of any of them. That the title to the notes was sufficiently transferred by the order of court and this trustee at the time so advised said Waggaman so that a special endorsement was unnecessary, and in fact no wrongful conveyance could have been made of said notes without the collusion of the former trustee Raleigh, and this there is no reason to believe ever was had.

In answer to the detailed interrogatories attached to the petition, this respondent says—

1 to 19. This respondent has fully stated all his information with regard to the F. H. G. White note, including the fact that said note has been fully accounted for so far as this respondent is concerned, and he is unable to add anything to the information hereinbefore given. That he has no knowledge as to whether it was secured by

liber 1462, folio 309 or not, or whether it was originally reduced from \$7333.33 to \$7273.32, or who made such payment, or whether it was ever owned by the Catholic University of America or was ever a full note for \$7333.33 when owned by such University, 86 whether it was ever owned by General L. P. Graham, or its amount when so owned, or the exact endorsement upon it, or its endorsement to Waggaman and Raleigh or to their order, but that, so far as he knows, it was never endorsed to Waggaman and Ralston, Trustees or to their order. That, on information and belief, he believes that the sum of \$7273.32 in funds of the trust estate was applied to purchase the White note which belonged to the estate, and that said note was purchased before he became trustee, and he knows nothing whatsoever of the details. That it was fraudulently disposed of by Thomas E. Waggaman without the knowledge of this respondent and in some way unknown to him, and of the circumstances of such disposition he knows not, but that, as hereinbefore stated, its face value has been accounted for fully. That he can give no other information concerning said note other than has heretofore been given.

20-21. The F. A. Moore notes aggregating \$1900.00 have been fully accounted for to this respondent by the sureties of Thomas E. Waggaman and he has no knowledge as to whether they have been actually cancelled or not. He himself has never endorsed them in any shape. He cannot say whether they are marked "paid" or "cancelled" and has no means of knowing, nor is he concerned, not being the owner thereof.

22. The Fannie A. Moore note for \$800.00 has never been paid, but is now proved in the Waggaman bankruptcy proceedings.

And having fully answered the petition, this respondent prays to be hence dismissed with his costs in this behalf wrong- 87 fully had.

JACKSON H. RALSTON.

DISTRICT OF COLUMBIA, ss:

Jackson H. Ralston, being first duly sworn, on oath deposes and says that he is the respondent mentioned in the foregoing answer by him subscribed; that he has read said answer and knows the contents thereof; that the matters and things stated therein on his personal knowledge are true, and those stated in information and belief he is informed and believes to be true.

JACKSON H. RALSTON.

Subscribed and sworn to before me this 26th day of July, A. D. 1906.

[SEAL.]

HARVEY T. WINFIELD,
Notary Public, D. C.

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EXHIBIT A.

AUGUST 23, 1899.

T. E. Waggaman and Jackson H. Ralston, Trustees.

Interest in F. A. Moore note of \$9973.32 from Feb'y 21, 1899 to Aug. 21, 1899.....	\$299.19	
Interest on K. E. Malone note of \$4986.66 from April 1, 1899 to Aug. 13, 1899.....	111.34	
Trustees' Commission		\$20.52
Check to Susan W. Edwards.....		195.01
Check to Alice Tyler, reserved.....		195.00
	<u>\$410.53</u>	<u>\$410.53</u>

FEB'Y 21, 1900.

T. E. Waggaman and J. H. Ralston, Trustees.

Interest on F. A. Moore note of \$9973.32 from Aug. 21, 1899 to Feb'y 21, 1900.....	\$299.19	
Interest on K. E. Malone note of \$4986.66 from Aug. 13, 1899 to Feb'y 21, 1900.....	149.58	
Trustees' Commission		\$22.43
Check to Susan W. Edwards.....		213.17
Check to Alice Tyler.....		213.17
	<u>\$448.77</u>	<u>\$448.77</u>

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AUGUST 21, 1900.

T. E. Waggaman and J. H. Ralston, Trustees.

\$9973.32 F. A. Moore, semi ann. Aug. 21....	\$299.19	
\$4986.66 K. E. Malone, semi ann. Aug. 21....	149.58	
Trustees' Commission		\$22.43
Check to Susan W. Edwards.....		213.17
“ “ Alice Tyler		213.17
	<u>\$448.77</u>	<u>\$448.77</u>

FEB'Y 21, 1901.

T. E. Waggaman and J. H. Ralston, Trustees.

Interest on F. A. Moore note of \$9973.32 semi annual to Feb'y 21, 1901.....	\$299.19	
Interest on K. E. Malone note of \$4986.66, semi annual to Feb'y 13, 1901.....	149.58	
Trustees' Commission		\$22.43
Check to Susan W. Edwards.....		213.17
Received for Alice Tyler.....		213.17
	<u>\$448.77</u>	<u>\$448.77</u>

90

AUGUST 21, 1901.

T. E. Waggaman and J. H. Ralston, Trustees.

Interest on F. A. Moore note of \$9973.32, semi annual to Aug. 21, 1901.....	\$299.19	
Interest on K. E. Malone note of \$4986.66, semi annual to Aug. 13, 1901.....	149.58	
Trustees' Commission		\$22.43
Check to Susan W. Edwards.....		213.17
Received for Alice Tyler.....		213.17
	<u>\$448.77</u>	<u>\$448.77</u>

FEB'Y 21, 1902.

T. E. Waggaman and J. H. Ralston, Trustees.

Interest on F. A. Moore note of \$9973.32, semi annual to Feb'y 21, 1902.....	\$299.19	
Interest on K. E. Malone note of \$4986.66, semi annual to Feb'y 13, 1902.....	149.58	
Trustees' Commission		\$22.43
Check to Susan W. Edwards.....		213.17
Received for Alice Tyler.....		213.17
	<u>\$448.77</u>	<u>\$448.77</u>

91

AUGUST 25, 1902.

Thos. E. Waggaman and J. H. Ralston, Trustees.

Interest on F. A. Moore note of \$9973.32, semi annual to Aug. 21, 1902.....	\$299.19	
Interest on K. E. Malone note of \$4986.66, semi annual to Aug. 13, 1902.....	149.58	
Trustees' Commission		\$22.43
Check to Susan W. Edwards.....		213.17
Received for Alice Tyler.....		213.17
	<u>\$448.77</u>	<u>\$448.77</u>

FEB'Y 20, 1903.

T. E. Waggaman and J. H. Ralston, Trustees.

Interest on F. A. Moore note of \$9973.32, semi annual to Feb'y 21, 1903.....	\$299.19	
Interest on K. E. Malone note of \$4986.66, semi annual to Feb'y 13, 1903.....	149.58	
Trustees' Commission		\$22.43
Check to Susan W. Edwards.....		213.17
“ “ Alice Tyler		213.17
	<u>\$448.77</u>	<u>\$448.77</u>

92

FEB'Y 21, 1903.

T. E. Waggaman and J. H. Ralston, Trustees.

Interest on F. A. Moore note of \$9973.32, semi annual to Aug. 21, 1903.....	\$299.19	
Interest on K. E. Malone note of \$4986.66, semi annual to Feb'y 13, 1903.....	149.58	
Trustees' Commission		\$22.43
Check to Susan W. Edwards.....		213.17
Check to Alice Tyler.....		213.17
	<u>\$448.77</u>	<u>\$448.77</u>

FEB'Y 23, 1904.

Thos. E. Waggaman and Jackson H. Ralston, Trustees.

Interest on \$9973.32 F. A. Moore to Feb. 21, 1904	\$299.19	
Interest on \$4986.66 K. E. Malone to Feb. 13, 1904	149.58	
Trustees' Commission		\$22.43
Check to Susan W. Edwards.....		213.17
Received for Alice T. Easter.....		213.17
	<u>\$448.77</u>	<u>\$448.77</u>

AUGUST 23, 1904.

Thos. E. Waggaman and Jackson H. Ralston, Trustees.

\$9973.32 F. A. Moore semi annually Aug. 21, 1904	\$299.19	
\$4986.66 K. E. Malone semi annually Aug. 13, 1904	149.58	
Amount due you.....		
	<u>\$448.77</u>	<u>\$448.77</u>

93 *Amended and Supplemental Petition of Alice Tyler Easter.*

Filed November 27, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 7907.

SUSAN W. EDWARDS ET AL.

v's.

CHAPMAN MAUPIN.

Now comes your petitioner, Alice Tyler Easter, (née Alice Tyler, great-granddaughter of the testatrix Mary E. Macpherson hereinafter mentioned, and granddaughter of said testatrix' daughter Susan W. Edwards, and niece of your petitioner's late co-petitioner Susan W. Edwards) and, by leave of Court first had and obtained, files this, your petitioner's amended and supplemental petition, and shows to the Court as follows, namely, that heretofore, to wit on the third day of March, A. D. 1906, she and her late co-petitioner, Susan W. Edwards, filed their certain petition in the above entitled cause against a certain Thomas E. Waggaman and a certain William H. H. Raleigh, as late trustees and in their capacities as set forth in said petition, and against a certain Jackson H. Ralston, as trustee and in his capacities as set forth in said petition (they being defendants to said petition), containing certain allegations, propounding certain interrogatories and praying certain relief, as will thereby more fully and at large appear.

94 1 to 34. Your present petitioner hereby expressly adopts each and all of the allegations, and interrogatories of said petition of March 3, A. D. 1906, and hereby expressly refers to the same and embodies the same *totidem verbis* in this petition as a part of this petition, and asks that the same be taken, considered and treated as a part of this petition, as fully and completely as if the same were here repeated verbatim, and bodily inserted, as allegations and interrogatories of this petition.

35. That your present petitioner Alice Tyler Easter (née Alice Tyler) is a citizen of the United States and a resident of the District of Columbia; that she is over twenty-one years of age; and that she is great-granddaughter of said testatrix Mary E. Macpherson, and granddaughter of said testatrix' daughter Susan W. Edwards, and niece of your present petitioner's late co-petitioner Susan W. Edwards; and that your present petitioner is the same person who as co-petitioner with said last named Susan W. Edwards filed said petition of March 3, A. D. 1906.

36. That since the filing of said petition of March 3, A. D. 1906, to wit on the 27th day of June, A. D. 1906, the said Thomas E. Waggaman (one of the defendants to said petition of March 3, A. D. 1906) departed this life.

37. That thereafter, to wit on the 27th day of August, A. D.

1906, said Susan W. Edwards (granddaughter of said testatrix, Mary E. Macpherson, and daughter of said testatrix' daughter Susan W. Edwards, and aunt of your present petitioner Alice Tyler Easter) died unmarried, leaving no child or children or descendants or descendant surviving her, but leaving your said present petitioner, Alice Tyler Easter, surviving her.

95 38. That heretofore, to wit on the 22nd day of January, A. D. 1896, your present petitioner's father, Henry B. Tyler, Jr., departed this life; and that heretofore, to wit on the 27th day of June, A. D. 1904, your present petitioner's mother, Mary M. Tyler, departed this life.

39. And your present petitioner, Alice Tyler Easter, further shows to the Court that upon, after and from the dying of your present petitioner's late co-petitioner, Susan W. Edwards, unmarried, and without leaving any child or children or descendants or descendant surviving her (whose said mother, Susan W. Edwards, had long ago predeceased her) your present petitioner, Alice Tyler Easter, under the terms and provisions of said last will and testament of said Mary E. Macpherson, in addition to the enjoyment (as equitable or beneficial owner thereof, or as *cestui que trust* thereof) of one moiety of the trust estate created by said will (which she previously was entitled to) became (that is to say your present petitioner, Alice Tyler Easter then, therefrom and thereafter became) entitled to the enjoyment (as equitable or beneficial owner thereof, or as *cestui que trust* thereof) of the other moiety of the trust estate created by said will.

40. That upon, from, after and ever since the death of your present petitioner's said aunt, Susan W. Edwards (who heretofore to wit on August 27th, A. D. 1903, died as aforesaid) your present petitioner, Alice Tyler Easter, under the terms and provisions of said will, became, has been, has continued to be and is *cestui que trust* of said entire trust estate (as well of the one moiety thereof as of the other moiety thereof) with all the rights, powers,
96 privileges, benefits, advantages and appurtenances to the same belonging or in anywise appertaining, and entitled to the benefit and enjoyment of the net rents, profits, and income of the whole of said trust estate (as well of the one moiety thereof as of the other moiety thereof) according to the terms and provisions of said will, and entitled to receive the same as therein provided.

To the end therefore that the defendants to this petition may upon their several and respective corporal oaths full true, direct, complete and perfect answer make to the allegations, statements and charges in this petition contained, and to the aforesaid interrogatories numbered and set forth; and inasmuch as your petitioner has no full, adequate and complete remedy at law, and is entitled to the aid of this Honorable Court, where such matters are peculiarly cognizable, your present petitioner, Alice Tyler Easter, therefore prays as follows:

Prayers.

1st. That the persons hereinafter named as defendants to this petition may be made defendants to the same.

2nd. That the defendant William H. H. Raleigh shall account to this Court for all of said trust estate which came into the hands of himself and his co-trustee, Thomas E. Waggaman, or into the hands of either of them, during their co-trusteeship; and that said defendant, William H. H. Raleigh shall be held responsible for, and liable for, any and all loss, deficiency, insufficiency or inadequacy during their said co-trusteeship, and for any bad or improper investments or neglect of duty during that time.

3rd. That the defendant Jackson H. Ralston, for himself as trustee, and for Thomas E. Waggaman, as his co-trustee, shall account to this Court for the whole trust estate during the period of their co-trusteeship; and that said defendant, Jackson H. Ralston shall be held responsible for, and liable for, any and all, deficiency, insufficiency or inadequacy during their said co-trusteeship, and for any bad or improper investments made, or continued, during that time, and for any neglect of duty during that time.

4th. That the defendant Jackson H. Ralston, trustee, shall also account to this Court for himself and his present co-trustee, Harry L. Rust for the whole trust estate during the period from the removal of said Thomas E. Waggaman as his co-trustee down to the time when said Ralston may be relieved of his present trusteeship.

5th. That as to all of said notes (except the Cralle and Fisher notes) the Court shall decree that the same are such that a Court of Equity, with knowledge of the facts, should not at the time the same were taken, or at any time since, or at the hearing of this cause, approve the same; and that the Court, by its decree, should disapprove the same.

6th. That the defendant William H. H. Raleigh shall be required or decreed to account in cash, and not in said so-called or pretended securities, for all of the trust estate for which he is in any way liable, or responsible, or accountable.

7th. That the defendant, Jackson H. Ralston shall be required or decreed to account in cash, and not in said so-called or pretended securities, for all of the trust estate for which he is in any way liable, or responsible, or accountable.

8th. That such rules may be issued, such orders may be passed, such references may be made and such accounts may be stated as the Court may deem necessary or proper, suitable or appropriate.

To which end your present petitioner, Alice Tyler Easter, prays for process against said defendants William H. H. Raleigh as late trustee, and in his capacities as set forth in this petition, and against said defendant Jackson H. Ralston, as trustee, and in his capacities as set forth in this petition (they being defendants to this present petition), requiring them, and each of them, to appear and answer the exigency of this present petition, and to answer said interrogatories.

9th. And your present petitioner, Alice Tyler Easter prays for such other and further relief in the premises as the nature of the case may require, and to this Court may seem meet and proper.

ALICE T. EASTER.

LEIGH ROBINSON,
CONWAY ROBINSON,

Solicitors for Petitioner, Alice Tyler Easter.

99 DISTRICT OF COLUMBIA, *To wit:*

I, Alice Tyler Easter, do solemnly swear that I have *heard* the foregoing and annexed petition by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

ALICE T. EASTER.

Subscribed and sworn to before me this 19th day of November, A. D. 1906.

[SEAL.]

H. L. RUST,
Notary Public.

Replication to Amended Answer.

Filed November 27, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 7907, Docket No. 21.

SUSAN W. EDWARDS ET AL.

vs.

CHAPMAN MAUPIN.

The petitioner, Alice Tyler Easter, hereby joins issue with the defendant, Jackson H. Ralston, in all capacities upon his amended answer filed on October 24th, 1906, in the above entitled cause.

LEIGH ROBINSON AND
CONWAY ROBINSON,

*Solicitors for said Petitioner,
Alice Tyler Easter.*

100

Answer of Jackson H. Ralston, Etc.

Filed December 5, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 7907.

SUSAN W. EDWARDS ET AL.

vs.

CHAPMAN MAUPIN.

1-34. Jackson H. Ralston for answer to the amended and supplemental petition of Alice Tyler Easter respectfully says he reiterates his amended answer heretofore filed herein to paragraphs 1

to 34 of the original petition and to the interrogatories thereto attached.

35-40. Answering paragraphs 35 to 40, this defendant on information and belief admits the truth of the averments therein contained.

And having answered said amended and supplemental petition, this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully had.

JACKSON H. RALSTON.

DISTRICT OF COLUMBIA, ss:

Jackson H. Ralston being first duly sworn on oath says that he has read the foregoing answer by him signed and knows the contents thereof; that the same is true of his own personal
101 knowledge, except as to the matters and things therein stated on information and belief, and as to the same he believes — to be true.

JACKSON H. RALSTON.

Subscribed and sworn to before me this 30th day of November, A. D. 1906.

[SEAL.]

HARVEY T. WINFIELD,
Notary Public, D. C.

Motion to Refer Cause to Auditor.

Filed December 12, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 7907.

SUSAN W. EDWARDS

v.

CHAPMAN MAUPIN.

Now comes the respondent, Jackson H. Ralston, and moves that the above entitled cause be referred to the Auditor to state his account as trustee.

RALSTON & SIDDONS,
Respondent's Solicitors.

Leigh Robinson, Esq., Attorney at Law, Washington, D. C.:

You will please take notice that the above entitled motion will be called up in the proper equity court on Friday, December, 14, 1906.

RALSTON & SIDDONS,
Respondent's Solicitors.

102 *Replication to Answer Filed December 5th, 1906.*

Filed December 28, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 7907.

SUSAN W. EDWARDS ET AL.

vs.

CHAPMAN MAUPIN.

The petitioner, Alice Tyler Easter, hereby joins issue with the defendant, Jackson H. Ralston, in all capacities, upon said defendant's answer filed December 5th, A. D. 1906 to the Amended and Supplemental petition of Alice Tyler Easter filed on November 27th A. D. 1906 in the above entitled cause.

LEIGH ROBINSON AND
CONWAY ROBINSON,

*Solicitors for said Petitioner,
Alice Tyler Easter.*

Motion to Refer Cause to Auditor.

Filed March 19, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 7907, Doc. 21.

SUSAN W. EDWARDS

vs.

CHAPMAN MAUPIN.

103 Now comes the respondent, Jackson H. Ralston, by Ralston & Siddons, his solicitors, and moves that the above entitled cause be referred to the Auditor to state his account as trustee.

RALSTON & SIDDONS,
Solicitors for Respondent Ralston.

MARCH 19, 1907.

Leigh Robinson, Esq., Attorney at Law, Washington, D. C.:

You will please take notice that the above entitled motion will be submitted to the equity court on Friday, March 22, 1907, at the opening of court or as soon thereafter as counsel can be heard.

RALSTON & SIDDONS,
Solicitors for Respondent Ralston.

Order Overruling Respondent Ralston's Motions, etc.

Filed May 7, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 7907.

SUSAN W. EDWARDS ET AL.

vs.

CHAPMAN MAUPIN.

This cause coming on to be heard upon the motions of the respondent, Jackson H. Ralston, respectively filed herein on December 12, 1906, and March 19, 1907 (in which said respondent, 104 Jackson H. Ralston, moves that the above entitled cause be referred to the Auditor to state his account as trustee) and, being argued by counsel for said respondent, Ralston, in support of said motions, and by counsel on the other side in opposition to said motions, and, being submitted to the Court, it is this 7th day of May A. D. 1907, upon consideration thereof, ordered, adjudged and decreed by the Court that said motions be, and the same are, hereby overruled.

By the Court:

HARRY M. CLABAUGH,
Chief Justice.

O. K.

F. L. S.

Memorandum.

Wm. H. H. Raleigh, late Trustee appeared to petitions of March 3, and November 27, 1906, and filed answers and amended answers to same, and replications were filed to said answers, as amended.

105 *Motion for Reference to State Account of J. H. Ralston, Trustee.*

Filed March 7, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 7907, Docket 21.

SUSAN W. EDWARDS

vs.

CHAPMAN MAUPIN.

Now comes the respondent, Jackson H. Ralston, by Ralston & Siddons, his solicitors, and moves that the above entitled cause be referred to the Auditor to state his account as trustee.

RALSTON & SIDDONS,
Solicitors for Respondent Ralston.

Leigh Robinson, Esq., attorney at law, Washington, D. C.:

You will please take notice that the above entitled motion will be submitted to the Equity Court on Friday, March 13, 1908, at the opening of Court or as soon thereafter as counsel can be heard.

RALSTON & SIDDONS,
Solicitors for Respondent Ralston.

106

Order Referring Cause to Auditor.

Filed March 23, 1908.

In the Supreme Court of the District of Columbia.

No. 7907, Equity Docket.

SUSAN W. EDWARDS ET AL.

v.

CHAPMAN MAUPIN.

This cause coming on to be heard upon the motion of the trustee, Jackson H. Ralston, to have said cause referred to the Auditor to state his account as trustee herein, and the same having been argued by counsel for said Jackson H. Ralston and by counsel for Alice Tyler Easter, and the same having been considered, it is, by the Court, this 23d day of March, A. D. 1908, Ordered That this cause be, and the same is hereby, referred to the Auditor of this Court to state the account of the aforesaid Jackson H. Ralston as trustee herein, and in stating said account, the Auditor shall take into consideration the prayers of the petition of Susan W. Edwards and Alice Tyler Easter, filed herein on the 3d day of March, 1906; and the prayers of the amended and supplemental petition of Alice Tyler Easter, filed herein on the 27th day of November, 1906. And he shall inquire into the alleged acts of negligence and omission of said Jackson H. Ralston, set out in the aforesaid petitions of Susan W. Edwards and Alice Tyler Easter, and he shall take and report to this Court such testimony as may be adduced before him,
107 either by said Jackson H. Ralston, or said Alice Tyler Easter, and report the results of his inquiry to this Court for such action as it may hereafter deem proper and appropriate.

This order is made over the objection of petitioners of March 3d, 1906, and November 27th, 1906.

ASHLEY M. GOULD, *Justice.*

Order Allowing Special Appeal.

Filed March 30, 1908.

Court of Appeals of the District of Columbia.

No. 294, Original Docket, January Term, 1908.

Equity. No. 7907.

ALICE TYLER EASTER, Petitioner,
vs.JACKSON H. RALSTON, Trustee, and WILLIAM H. H. RALEIGH,
Late Trustee.

On consideration of the petition of Alice Tyler Easter for the allowance of a special appeal from the order of the Supreme Court of the District of Columbia of March 23, 1908, in the case of Susan W. Edwards, *et al.*, vs. Chapman Maupin, Equity No. 7907, referring said cause to the Auditor to state the account of Jackson H. Ralston, as trustee, etc., It is by the Court this day ordered that said petition be, and the same is hereby, granted.

Per MR. CHIEF JUSTICE SHEPARD,
March 30, 1908.

[SEAL.]

A true copy.

Test:

HENRY W. HODGES,
Clerk of the Court of Appeals
*of the District of Columbia.*108 *Special Appeal of Alice Tyler Easter, &c.*

Filed March 30, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 7907.

SUSAN W. EDWARDS ET AL.

vs.

CHAPMAN MAUPIN.

The Clerk of said Court will enter a special appeal by Alice Tyler Easter to the Court of Appeals of the District of Columbia from the order of the Supreme Court of the District of Columbia entered on March 23, 1908, in the case of Susan W. Edwards, *et al.*, vs. Chapman Maupin, Equity No. 7907, referring said cause to the Auditor to state the account of Jackson H. Ralston, as trustee, etc. Such

special appeal has been duly allowed by said Court of Appeals of the District of Columbia.

LEIGH ROBINSON AND
CONWAY ROBINSON,

Solicitors for said Alice Tyler Easter, Appellant as Aforesaid.

Memorandum.

April 1, 1908.—Appeal bond (supersedeas) filed.

109 In the Supreme Court of the District of Columbia.

No. 7907. In Equity.

SUSAN W. EDWARDS ET AL.

vs.

CHAPMAN MAUPIN.

The President of the United States to Jackson H. Ralston, trustee,
Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal of Alice Tyler Easter allowed by the Court of Appeals of the District of Columbia from an order passed by the Supreme Court of the District of Columbia, on the 23rd day of March A. D. 1908, in the above entitled cause, in which appeal said Alice Tyler Easter is Appellant, and you are Appellee, to show cause, if any there be, why the order rendered against the said Appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, this 2nd day of April in the year of our Lord one thousand nine hundred and eight.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Service of the above Citation accepted this — day of —, 190—.

Attorney for Appellee.

[Endorsed:] No. 7907. Equity. Edwards *vs.* Maupin. Citation. Issued Ap'l 2d, 1908. Served copy of the within Citation on within named Jackson H. Ralston, trustee, April 2, 1908. Aulick Palmer, Marshall. S. ——— attorney for appellant.

110 *Directions to Clerk for Preparation of Transcript of Record.*

Filed April 2, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 7907.

SUSAN W. EDWARDS ET AL.

vs.

CHAPMAN MAUPIN.

The appellant, Alice Tyler Easter, hereby designates the following parts of the record which she wishes to be included in, and desires to have included in, the transcript of record upon appeal to the Court of Appeals of the District of Columbia from the order passed in the above entitled cause on March 23, 1908, as necessary for the hearing of said appeal, and as sufficient for the determination of the questions involved upon said appeal, and said appellant hereby requests, directs and notifies the Clerk of the Supreme Court of the District of Columbia, in making up the transcript of record to be transmitted to said Court of Appeals on said appeal, to make a transcript of the parts of the record and papers designated below, and to include the same as indicated below, together with the *Memoranda* indicated below, in, and as constituting, the transcript of record upon said appeal, namely:

1. Petition of Susan W. Edwards and Alice Tyler Easter *filed March 3, 1906.*

111 2. Amended answer of Jackson H. Ralston, trustee, *filed October 24, 1906.*

3. Amended and Supplemental petition of Alice Tyler Easter *filed November 27, 1906.*

4. Replication *filed November 27, 1906* joining issue upon said amended answer of October 24, 1906.

5. Answer of Jackson H. Ralston, trustee, *filed December 5, 1906* to said amended and supplemental petition.

6. Motion *filed December 12, 1906.*

7. Replication *filed December 28, 1906* joining issue upon said answer of December 5, 1906.,

8. Motion *filed March 19, 1907.*

9. Order *passed May 7, 1907* overruling both of said motions.

10. *Memo.*—"Wm. H. H. Raleigh, late trustee, appeared to said petitions of March 3, 1906 and November 27, 1906 and filed answers and amended answers to the same; and replications were filed joining issue with said defendant upon his answers as amended."

11. Motion *filed March 7, 1908.*

12. Order *passed March 23, 1908.*

13. *Allowance* by Court of Appeals of the District of Columbia of *Special Appeal* from said order of March 23, 1908.

14. Special appeal taken pursuant to said allowance.

15. *Memo.*—"Appellant's supersedeas Appeal Bond was approved and filed April 1, 1908."

16. Citation.

17. This notice, direction and designation.

LEIGH ROBINSON AND
CONWAY ROBINSON,

Solicitors for said Alice Tyler Easter, Appellant.

112 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 111, both inclusive, to be a true and correct transcript of the record according to Rule Five (5) of the Court of Appeals of the District of Columbia, (as designated by Appellant's Solicitors), in cause No. 7907 in Equity, wherein Alice Tyler Easter, is Petitioner and Appellant, and Jackson H. Ralston, Trustee, is Defendant and Appellee, as the same remains upon the files and of record in this Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of April, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1897 Alice Tyler Easter, appellant, vs. Jackson H. Ralston, trustee. Court of Appeals, District of Columbia. Filed Apr. 20, 1908. Henry W. Hodges, clerk.

IN THE
Court of Appeals of the District of Columbia

October Term, 1908.

ALICE TYLER EASTER,	}	No. 1897.
Appellant,		
vs.		
JACKSON H. RALSTON,	}	No. 4 Special Calendar.
Trustee Appellee.		

Brief on Behalf of Appellee.

EUGENE A. JONES,
Attorney for Appellee.

IN THE
Court of Appeals of the District of Columbia

October Term, 1908.

ALICE TYLER EASTER, Appellant, <i>vs.</i> JACKSON H. RALSTON, Trustee Appellee.	}	No. 1897. No. 4 Special Calendar.
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Brief on Behalf of Appellee.

THE FACTS.

Mary E. Macpherson died in 1873, leaving a will whereby she devised certain property to her executors, Chapman W. Maupin and Robert W. Maupin, in trust for certain beneficiaries therein mentioned, of whom the appellant was one. Thereafter, Robert W. Maupin died, and Chapman W. Maupin resigned his trust, and on November 2, 1881, an original bill was filed (Eq. 7907 Supreme Court, D. C.) by the appellant and another against said Chapman W. Maupin, praying an accounting and the appointment of a new trustee, in which such proceedings were had, that James B. Green was substituted in the place of said Chapman W. Maupin. Thereafter upon a petition filed in the same cause by the beneficiaries under said will said James B. Green was on October 17, 1890, removed, and William H. H. Raleigh and Thomas E. Waggaman substituted as Trustees in his place, the decree appointing them providing that "Each Trustee shall be responsible only for his own default."

(R. p. 35.) Thereafter in April 26, 1899, by a decree passed in the same cause, said W. H. H. Raleigh was relieved as Trustee upon his own petition, and it was ordered "that Jackson H. Ralston be and hereby is appointed substitute trustee to act in the place of said W. H. H. Raleigh." (R. p. 6). Thereafter in September, 1904, said Waggaman resigned and Harry Lee Rust was substituted in his place (R. p. 9). On December 19, 1905, said Ralston resigned as Trustee and on his application an order was passed in the same cause referring his accounts to the Auditor for settlement. (R. p. 30.) This order was on December 22, 1905, set aside (R. p. 30); on December 12, 1906, and again on March 19, 1907, Ralston moved for a reference to the Auditor to state his accounts, these motions were overruled on May 7, 1907 (R. p. 55); on March 7, 1908, Ralston again moved for a reference and on March 23, 1908, the following order was passed. (R. p. 56.)

IN THE SUPREME COURT OF THE DISTRICT
OF COLUMBIA.

<hr style="width: 20%; margin: 0 auto;"/> <p>SUSAN W. EDWARDS, <i>et al.</i>, <i>vs.</i> CHAPMAN MAUPIN.</p>	{	No. 7907, Equity Docket.
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This cause coming on to be heard upon the motion of the Trustee, Jackson H. Ralston, to have said cause referred to the Auditor to state his account as Trustee herein, and the same having been argued by counsel for said Jackson H. Ralston and by counsel for Alice Tyler Easter, and the same having been considered, it is, by the Court, this 23d day of March, A. D., 1908, ordered that this cause be, and the same is hereby referred to the Auditor of this Court to state the account of the aforesaid Jackson H. Ralston as Trustee herein, and in stating said account the Auditor shall take into consideration the prayers of the petition of Susan W.

Edwards and Alice Tyler Easter, filed herein on the 3d day of March, 1906; and the prayers of the amended and supplemental petition of Alice Tyler Easter, filed herein on the 27th day of November, 1906. And he shall inquire into the alleged acts of negligence and omission of said Jackson H. Ralston, set out in the aforesaid petitions of Susan W. Edwards and Alice Tyler Easter, and he shall take and report to this Court such testimony as may be adduced before him, either by said Jackson H. Ralston or said Alice Tyler Easter, and report the results of his inquiry to this Court for such action as it may hereafter deem proper and appropriate.

This order is made over the objection of petitioners of March 3, 1906, and November 27, 1906.

ASHLEY M. GOULD, *Justice.*

It is to review this order that this appeal is taken.

On March 3, 1906, the appellant filed a forty-seven page petition in the original cause, in which petition after reciting the proceedings theretofore had in said cause, she charges said Ralston with neglect of his duty as Trustee, alleged to have arisen out of his failure to take an active part in the management of the trust, and with alleged losses arising out of delinquencies and defaults of his predecessor in the trust, Raleigh and his co-trustee, Waggaman, and prays for an accounting and discovery. (R. pp. 1 to 25 inc.)

On October 24, 1906, Ralston filed his amended answer to said petition, in which he denied the allegations of neglect and charges in the bill, as well as all liability for the trust fund, except as to that portion which actually came into his hands, and in which he gives full and complete discovery as to the matters prayed in the petition, together with an account of the trust fund. (R. pp. 35 to 48 inc.)

On November 27, 1906, appellant filed her amended petition in the cause, in which she alleged facts showing that she had succeeded to the rights of all of the beneficiaries

named in the will of Sarah E. Macpherson, and in which she reiterates her prayers for accounting, and prays in addition that Ralston be required to account for the trust estate, in cash, and not in the securities constituting the trust estate; on December 5, 1906, Ralston answered the amended petition, admitting the acquisition by appellant of the entire title to the trust fund and reiterating his answer to the former petition. A replication to the answer first referred to here was filed November 27, 1906, and a replication to the second answer, or answer to the amended petition, was filed December 28, 1906, and though nearly two years has elapsed since issue joined, no attempt has been made to take proof.

ARGUMENT.

The question presented by the record is this: In a suit for an accounting, *where no issue is made as to the plaintiff's right to the accounting*, but only to the defendant's liability for certain items of the account, has the Chancellor the right to refer the cause to a Master; or must he require that proof be taken before an examiner in support of the bill before the order of reference? The Appellant contends the latter. If this contention is correct the Appellant is complaining of the deprivation of a right which she enjoyed for nearly two years and never sought to avail herself of. She obtains a special appeal to this Court for the purpose of obtaining the right to take her testimony before an examiner of the Court instead of in the Auditor's Office, a thing she might have done at any time from November 26, 1906, when issue was joined on the Appellee's answer, up to March 23, 1908, when the cause was referred to the Auditor. It is as much the right of a fiduciary to invoke the aid of a Court of Equity for the purpose of having his accounts settled and passed, as it is of the beneficiary to have the fiduciary account before said Court. The record shows that both parties have been *actors* in this case for a common end; that Ralston took the initiative three years ago when he

asked that his accounts be settled. If the Appellant really wanted to adduce her proof before an Examiner in Chancery why did she not proceed after issue joined? The record shows that from the time of filing her replication the Appellant has done absolutely nothing in this case other than defend applications made by the Appellee to have his accounts stated, and it is submitted that even if it were a right of the Appellant to take proof before an examiner, where she has neglected to avail herself of it, the Appellee's right to have his accounts stated was and is entitled to consideration, and that the Court below was well within its power in ordering the reference to the Auditor.

We concede that in a suit for an accounting, where the right of the complainant to have any account at all, is denied by the defendant, *the defendant* is entitled to have that issue decided by the Court upon proof taken in the usual course before he can be compelled to account in the Master's Office, and we believe that the cases cited in the brief of opposing counsel go no further than this. But where the right to an accounting is undisputed, we submit that the Chancellor has a right, to be exercised in his discretion, to refer the cause to a Master to take the evidence and report his findings to the Court.

It has been a right of the Chancellor, resting wholly in his discretion, which has existed from the time of the creation of the office of Master in Chancery, to call to its aid the services of a master when an issue of fact arises or when the suit involves the settlement of an account.

Nelphi Irrigation Co. vs. Jenkins.

8 Utah, 369, in which is cited Church vs. U. S. 140, U. S. 665.

Barey vs. Gallagher, 20 Wall, U. S. 670.

Commercial Bank vs. McAuliffe, 92 Wis., 242.

Vaney vs. Toledo, 67 Fed., R. 379.

One of the rules of evidence in equity cases is, that it is only necessary for the plaintiff in order to entitle him to a

decree to prove so much of the allegations in the bill as are necessary to entitle him to a decree. "Thus" (as said by Mr. Daniel in his work on Chancery Practice), "where the suit is for an account, all the evidence necessary to be read at the hearing is that which proves the defendant to be *an accounting party*, and then the decree to account follows of course; *and any evidence as to the particular items* of an account, however useful they may be in a subsequent stage of the cause, would be irrelevant at the original hearing." (See in support of this *Dubourg de St. Colombe vs. U. S.*, 7 Peters, 625. *Hudson vs. Trenton Mfg. Co.*, 1 C. E. Green (N. J.), 475. *Lockett vs. Lockett*, L. R. 4, Ch. App. 336.) "For this reason where the suit is against an administrator, or an executor, all that is necessary to prove, on the part of the plaintiff is, that the defendant fills and has acted in that character. This point was much discussed before Lord Gifford, M. R., in *Law v. Hunter*. There the defendant, who had principally acted as executor of the testator, admitted that he had received personal estate of the testator to the amount of from £35,000 to £45,000; and the plaintiff, having gone into very voluminous evidence to show how much of the personal estate of the testator had come into the defendant's hands, in order to prove that he had received assets to a much larger amount than that admitted by the answer, proposed to enter such evidence as read; but the Master of the Rolls would not permit it to be done, as the only tendency of such evidence was to show the state of the account, which the Court itself could not inquire into, but must refer to the Master as the proper person for taking the account. The same principle was afterwards acted upon, by the same learned Judge, in *Walker v. Woodward*, where, upon a bill for an account, the liability to account having been admitted by the defendant, he had entered into evidence to prove items of his discharge, but was not suffered to read them at the hearing."

In this case no issue having been made as to the duty of the Appellee to account, the case could properly be brought

to a hearing on the pleadings without proof, and the Appellant would be entitled to a decree for an account, the very decree or order that is appealed from.

An examination of the record discloses this, *there is no issue of fact made by the pleadings*; the answer of the Appellee admits substantially all of the allegations of fact made in the Appellant's petition, but it denies the conclusions of law therein set forth, to-wit, that the Appellee by reason of those facts became personally and individually accountable for any loss of the trust estate. The case might therefore at any time have been calendared for hearing on petition and answer upon the order of the Appellant. What, in that event, would have been the decree? Why a decree for an accounting and a reference to the Auditor to state the account, with directions to consider and report on the question of personal liability as a part of the accounting, the very order appealed from. We ask the attention of the Court to the language of the order appealed from. It directs the Auditor "to inquire into the alleged acts of negligence and omission of said Jackson H. Ralston—and he shall take and report to the Court such testimony as may be adduced before him either by said Jackson H. Ralston, or said Alice Tyler Easter, and report the results of his inquiry to this Court for such action as it may hereafter deem proper and appropriate."

Is this a delegation to the Auditor of any of the judicial functions of the Chancellor?

The duties of Masters are various, and difficult to be specified; for there is no question of law or equity or disputed fact or facts which a master may not have occasion to decide upon, or respecting which he may not be called upon to report his opinion to the Court. And it would be tedious to specify every head of reference to a Master, because they are almost as numerous as the matters subject to the jurisdiction of the Court itself. It may be observed generally, however, that references to a Master upon decrees or decretal orders are made for either of the following

purposes: 1. To take accounts and make computations; 2. To make inquiries; 3. To perform some special ministerial acts directed by the Court, such as the sale of property, the settlement of deeds, the appointment of new trustees, etc.

It is submitted that the order appealed from is one resting in the sound discretion of the Court below, and should not be disturbed unless there has been a manifest abuse of that discretion.

Respectfully submitted.

EUGENE A. JONES,

Attorney for Appellee.

